

***United States Court of Appeals  
for the Second Circuit***



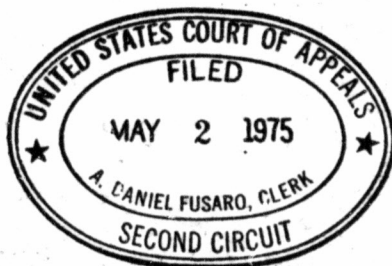
**TRANSCRIPT**





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1 gabr  
2 United States of America

3 v.

74 Cr. 159

4 Philip Stoller and  
5 Martin Frank

New York, New York

6  
7 October 15, 1974  
8 9:30 a.m.

9 (Trial resumed.)

10  
11 (In open court; jury present.)

12 THE COURT: Good morning.

13 We are missing several persons here, I think.

14 MR. DERFNER: They are on their way down,  
15 your Honor. They should be here momentarily.

16 THE COURT: All right.

17 (Pause.)

18 THE COURT: All right, Mr. Gould.

19 MR. GOULD: Thank you, your Honor.

20 May it please the Court, Madam Forelady,  
21 ladies and gentlemen of the jury:

22 We come to the end of this ordeal because  
23 I think it has been an ordeal for all of us, and in all  
24 probability this is the last time that I will address you  
25 on the subject of this case, and before I get to the sub-

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2 stance of what I have to say, I would like to make few  
3 comments about the part that the jury is called on to  
4 play in a situation like this.

5 You have participated now for five weeks in what  
6 is realistically the ultimate experience for an American  
7 citizen, the right, power to sit in judgment on fellow  
8 citizens, to decide whether they are to be stamped with the  
9 brand of the felon, whether they are to stand for the rest  
10 of their lives dishonored, humiliated, outcast or whether  
11 they are to resume their natural rightful place among their  
12 citizens, among citizens of this country.

13 Now, we are not concerned here with some minor  
14 problem, who bumped who, or whether they should pay some  
15 damages or anything like that, because for these two defend-  
16 ants in this case a verdict of guilty is a kind of  
17 extinction, it destroys them.

18 And so I mention this to you so you will understand  
19 not only the awesome gravity of your own task, and it is  
20 a frightening responsibility, but you will understand the  
21 concern with which I am actuated. And if in the course of the  
22 trial and if in the course of this summation I betray the  
23 degree of emotion which you think is probably in conflict  
24 with the professionalism that you would expect of a lawyer  
25 of my years, understand, please, that I, too, am deeply

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2 moved by the responsibility that I have, and you have seen  
3 me now for five weeks, obviously not a stripling,  
4 fighting like a tiger for these people. And you must have  
5 asked yourselves why, why the intensity, why the emotion,  
6 why the dynamism of this? Because, ladies and gentlemen,  
7 I have perceived over an enormous history in this kind of  
8 business, I have perceived from the beginning that we  
9 were in the presence not of a normal accusation of criminal-  
10 ity, but we were in the presence of an infamy. We were  
11 in the presence of something foul.

12 I am going to remind you of something that I  
13 said to you the first time I spoke to you. When I opened  
14 I told you that when we are finished you are going to  
15 see that this man D'Onofrio is not just a plain, ordinary  
16 garden variety liar, but, and these were the words I used  
17 to you, ladies and gentlemen, that he is telling the lies  
18 as part of a specific deal, a specific plan, a conspiracy  
19 in which he and certain other people are taking part to  
20 lay the blame for what they did on Stoller and Frank.

21 And then I told you I wasn't going to make any  
22 commitment to you about what witnesses I would call for  
23 reasons which those you who understand these things will  
24 now appreciate. But I said to you this contract I will  
25 make with you, ladies and gentlemen, with complete confidence

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that when we are finished with the people who charged these two men with criminality, you will be convinced that they are confessed liars, confessed perjurers, convicted felons and participants in a scheme, and before very long in this trial we will also satisfy you who are the authors of that scheme and why that scheme has been put into effect.

And I suggest to you, ladies and gentlemen, that I have kept my contract with you, that I have shown what they are and why they are doing what they are doing and who besides these liars that we heard are responsible for this.

2 Now, ladies and gentlemen, I will come back  
3 to that theme before I am finished, but let me give you some  
4 guidelines about my approach to this summation.

5 You know there was a time in my life and in  
6 the lives of some of you jurors when an accusation brought  
7 in a court by the United States Government was treated with  
8 very special respect because it could not occur to any of  
9 us that the Government would stoop to the kind of infamy  
10 that we have seen perpetrated in this courtroom. And  
11 it was that kind of confidence in Government that led us to  
12 sharpen our profession tools.

13 It was tough.

14 I suggest to you that in this courtroom you  
15 have seen a demonstration that the confidence that some of  
16 us had in our Government is sadly misplaced.

17 When you think of Mr. D'Onofrio and Mr. Bonavia  
18 and poor little Feeney and the way they put money in the  
19 hands and the other things which we will come to in a little  
20 while, I can only think about the way this case smells.

21 You know, there is a great phrase, the French  
22 poet Baudelaire coined, a phrase one time about the decadence  
23 at the end of the 19th Century. He said there is a phos-  
24 phorescence to putrescence. It was said a little better by  
25 an American orator who was commenting on the political



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2 oratory of one of his rivals and he said his oratory reminds  
3 me of a dead mackerel in the moonlight, because it stinks  
4 and it shines and it shines and it stinks.

5 Ladies and gentlemen, I can think of no better  
6 description of this case. This case stinks and it shines and  
7 it shines and it stinks and everything about it stinks with  
8 the aroma of corruption, with the odor of putrescence, with  
9 the odor of perjury and with a few other odors.

10 The cornerstone of the case, the central pillar  
11 of what the Government has constructed here in its effort  
12 to exterminate these people is Mr.D'Onofrio. And we had  
13 Mr. D'Onofrio on the stand for a long time and you were  
14 enabled principally through my, I am sure, boring, tedious  
15 cross-examination of this man to understand what he is.

16 In my mind, ladies and gentlemen, Mr. D'Onofrio  
17 is Iago. Remember Iago in Othello, Iago, the man who with  
18 his lies destroys the lives of decent human beings, other  
19 people with whom he has lived in intimate, decent relation-  
20 ship, Iago that turns to Othello into a murderer by his lies.  
21 That was Iago.

22 And you know Shakespeare is great on villians.  
23 That is a villian. Shakespeare is superb. Shakespeare  
24 has one of his characters say of Iago, after the tragedy  
25 that he wrought, has been revealed in all its tragic ugliness



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2 and after they understand why these people have been brought  
3 to the destruction by the lies of this man, Shakespeare has  
4 someone say of Iago, "I will be hanged if some eternal  
5 villian, some busy and insinuating rogue, some sneaking  
6 coggng, sniveling slave, to get some office has not devised  
7 this slander."

8 And this man, to get immunity for a lifetime of  
9 criminality, this man to get money, and we are going to have  
10 a lot to say about the money before we are finished, this  
11 man with the assistance of the Government people in this  
12 case devised this hideous slander to destroy some people.

13 But, you know, liars need long memories and his  
14 wasn't too good because like most liars he improvised on the  
15 stand, and we will remind you of some of those improvisations  
16 and how they give the lie to the whole narrative of fraud,  
17 and there is another force at work in a courtroom when  
18 skilled professionals are at work, and if I may paraphrase  
19 the great scientist, Husley, it is one of the great tragedies  
20 of this kind of case that beautiful hypothesis can be slain  
21 by ugly facts, and in this case this hypothetical structure,  
22 this architecture of perjury that was created, D'Onofrio  
23 and these fellows were destroyed by facts out of their own  
24 mouths.

25 And now, ladies and gentlemen, let us get down

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2 to the case.

3 In order to understand this case, you must under-  
4 stand that we are not talking about 1975, we are not talking  
5 about the conditions which prevail today, we are talking  
6 about 1968 and 1969.

7 And there was some testimony, the true significance  
8 may have eluded you when I asked for it and got it, you  
9 remember the witness Rashes. Rashes is the nice man from the  
10 Securities and Exchange Commission, the kind of Government  
11 officer who we can all be proud of, the kind of man we should  
12 thank the Lord every day stays in Government and does a  
13 decent, honest job, and gives decent honest answers to the  
14 right questions.

End 1B

1                   qb-1  
2                   You remember I asked Mr. Rashes, because we were  
3                   all surprised. It was a stock that comes out at \$7 and  
4                   within a few weeks it is selling for \$60 and the Government  
5                   would like us to think that it was selling at this inflated  
6                   price because of the activities of these defendants and  
7                   D'Onofrio.

8                   Listen to what Mr. Rashes has to say on that. We  
9                   called them hot issues, remember? I said to him when he  
10                  conducted his investigation he wanted to be sure that the  
11                  increase in price was related to some kind of reasonable,  
12                  normal demand for the stock and he said yes, that was his  
13                  purpose, that was what he had in mind when he went into the  
14                  subject of what had occurred with Training With the Pros.

15                 Now hear this: In other words, Mr. Rashes, the  
16                 expert, the endorsement man from the Securities and Exchange  
17                 Commission, in other words, Training With the Pros was not  
18                 an isolated example of a stock increasing 7, 8, 10 times in  
19                 value? Not at all, it was happening all the time in that  
20                 market, yes, sir.

21                 And it was happening with a number of securities  
22                 where there was no evidence of manipulation or any other  
23                 skullduggery, yessiree, that is what was happening.

24                 So we know that the security with which we are  
25                 concerned in this case was one of the securities which back

1 qb-2

2 in the feverish securities market of 1968 and 1969 took  
3 off like a rocket.

4 It is not for me to defend that. It is not for  
5 me to comment on it. It was a kind of lunacy which seized  
6 it for which we are all paying a heavy price today.

7 But these fellows didn't do it. The market did  
8 it and if there was any doubt the Government brought another  
9 witness in, a nice decent little fellow, Mr. Hyman. He was  
10 asked a question about what caused the frantic trading.  
11 Hyman is an old pro, remember, 40 years in the market, and  
12 he knows his business. He knows what he is talking about.  
13 Nobody is going to charge him with improvisations of perjury  
14 or any of that kind of stuff. This is an honest man giving  
15 an honest answer. He was asked what do you think caused the  
16 price of the Training With the Pros stock to go up like  
17 that?

18 "Oh," he says, "it was outrageous what the over-  
19 the-counter traders did, fantastic." The over-the-counter  
20 traders did? Yes. You mean they are bidding up, terrible,  
21 terrible, he says in his emotional way. You didn't discuss  
22 that with Mr. Stoller and listen to the man's answer, this  
23 honest little fellow, 40 years in the market, Mr. Stoller  
24 had nothing to do with that.

25 It was the way the brokers traded it up. The

1 qb-3

2 traders. Elinor Wein -- again, I am only talking about  
3 their witness, people they brought in here. I have no  
4 reason to question their honesty. Elinor Wein says -- and you  
5 remember she is an experienced broker, a lot more sophis-  
6 ticated than she seemed to be at the beginning -- and you  
7 knew, I asked, did you not, in April of 1969 that there was  
8 considerable activity in the market in new issues?

9 Yes, she says, but they were bidding them up,  
10 that they were running away, yes, she says. So we are  
11 dealing here not with a phenomenon created by the machinations  
12 of the defendants but we are dealing with something that  
13 was a normal incident to the operation of this crazy market  
14 back in '63 and '69.

15 They didn't need any manipulations. They  
16 didn't need any tricks. The securities were coming out and  
17 if there was any prospect to them at all they were running  
18 away.

19 So that we know -- and by the way, on the same  
20 subject, we had the testimony of Stoller before the Securities  
21 and Exchange Commission. He told you what had happened  
22 and you can have Mr. Stoller's testimony before the  
23 Securities and Exchange Commission because it is an exhibit  
24 in this case. It is Exhibit 105, and if you want to hear what  
25 Mr. Stoller had to say about the rise in the price of



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1 Training With the Pros, he tells you the whole story here  
2 and parts of it were read to you. He thought that  
3 this was a good stock, that it had an idea behind it, that  
4 it had a chance.  
5

6 He mentioned when he was there that he had found  
7 a company which he compared to this called Franklin Mint.  
8 You have heard these allusions to Franklin Mint. Franklin  
9 Mint, if you read this, you understand what it was- It  
10 was another obscure little company. Nobody ever heard of it.  
11 It came out with a small public offering and it went  
12 through the roof because there was an idea behind it, a  
13 commercial idea.

14 So Stoller tells you that he found this company,  
15 he brought it to a broker. He was the finder and everybody  
16 made a lot of money in Franklin Mint. And when somebody  
17 came to him with Training With the Pros, he thought in the  
18 presence of another Franklin Mint. Read it, you can have  
19 it.

20 Let me interrupt myself. You can have any  
21 exhibit you want. You can have any testimony that you want  
22 to hear again, you can have it read back to you. His Honor  
23 I am sure will see to that. If you are in doubt about the  
24 accuracy of any of the statements that I make to you or  
25 indeed that any of the other lawyers made to you, you can

1 qb-5

2 verify it. Look at the exhibit, call for the testimony.  
3 And you will get it. You will get it promptly.

4 So that in the year 1968 and 1969 you were dealing  
5 with something that, God help us all, seemed normal in that  
6 period. There is one other thing about Rashes' testimony  
7 that I want to remind you about. After I had elicited from  
8 Mr. Rashes, whose honesty and integrity are unassailable  
9 by anybody, after I had elicited from him that the action,  
10 the market action of Training With the Pros was consistent  
11 with what has happened generally in the market and after I  
12 elicited from him that he had conducted the thorough investi-  
13 gation and examined people, I asked him a very simple but  
14 very significant question:

15 "Q As far as you know, Mr. Rashes, no other action  
16 was taken by the Securities and Exchange Commission after that?

17 "A As far as I know.

18 "Q As far as you know the Securities and Exchange  
19 Commission didn't refer this matter to the Department of  
20 Justice?

21 "A That is right." He did not refer to the Depart-  
22 ment of Justice, because in the mind of Mr. Rashes what had  
23 happened with Training With the Pros was a purely natural thing  
24 in that crazy market. And it remained for the combination of  
25 D'Onofrio and Sorkin to translate this into a serious violation  
of the securities laws. That is what this case is about.

End 2A

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2b am

What is the government's theory of the case?

First of all, as I said before, the principal prop that holds up the whole edifice is D'Onofrio, because I think everybody in the room will agree that if D'Onofrio was lying and you don't believe him and you recognize him for what he is the whole cathedral collapses.

So prop No. 1 is D'Onofrio. You have got to believe D'Onofrio. But you can't. Even these people will in their outrageous arrogance would not expect you to convict a dog on the testimony of a D'Onofrio. There has got to be some corroboration. There have got to be other people, and so they supply prop No. 2. And prop No. 2, that is Bonavia, believe it or not, Allen, What am I talking about Allen? Do I mean Allen? Yes, I mean Allen. Ladies and gentlemen, you must understand that when this indictment came down and when we were hired to defend Mr. Stoller and my friend Mr. Feldshuh was hired to defend Mr. Frank, Allen was the other witness for them and it wasn't until August, shortly before we started the trial that anybody learned that Mr. Allen, for whatever reasons, and we will come back to that, he wasn't going to be there supporting D'Onofrio. Something happened. Something had gone wrong with Mr. Allen. Maybe he had it up to here. Maybe his conscience bothered him. We will come back to see what happened



1 with him. But remember that when the architects of this  
2 miserable fraud put it together, prop No. 1, D'Onofrio,  
3 prop No. 2, Allen, and now let us get some little props and let  
4 us see where we can dig that up -- and there is a lot of  
5 trouble about that.  
6

7 They couldn't find anybody. Finally they came  
8 along with this fellow Feeney and we will talk about  
9 him in a few minutes and see how much credence you can  
10 give to that testimony.

11 Now I suggest to you that this frame up in which  
12 Mr. D'Onofrio and somebody in the government participated  
13 fell to pieces somewhere along the line.

14 First of all, Allen pulled out on him. It is a  
15 different case. This is a tough case. If Mr. D'Onofrio  
16 comes in and he tells his story with all the Heckels  
17 & Jeckels and the other junk that he threw in to make it  
18 sound right, and then Mr. Allen comes along and he gives  
19 another story like that and, after all, Allen is a bosom  
20 friend of Mr. Stoller and gee whiz, if your brother turns you  
21 in -- and they were practically brothers, as you remember --  
22 that is one case, but Allen pulls out on him.

23 I don't know where Allen pulled out or why  
24 Allen pulled out. But I would like to make a suggestion to  
25 you. You know, every once in a while a bridge collapses

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2 and every once in a while a building falls in because some-  
3 body made a mistake.

4 I suggest to you that the critical mistake  
5 in this case is the pretended improvised, fantastic story  
6 about the meeting at the Hotel Baur au Lac on the 8th,  
7 9th and 10th of June 1968.

8 The meeting described with such circumstantial  
9 accuracy by D'Onofrio. You know, that was the one where they  
10 made the Henckel & Jeckel game.

11 I must tell you, as I listen to this man tell  
12 the story, knowing that we had it in our power to pull the  
13 rug right out from under him on cross examination,  
14 I was reminded of the line in the Mikado, you know in the  
15 Mikado the executioner is supposed to execute the Mikado's  
16 son and he doesn't do it but when the Mikado's son is  
17 asked "Did you do it" and he says "Yes, I did it" and he  
18 goes on and gives all the details about how the poor victim  
19 died and what he said before he died and how he acted when  
20 the ax came down and when someone says to him "That is  
21 all a bunch of lies," he says, "No, no, that is not lies,"  
22 he says. He says "That is circumstantial stuff calcu-  
23 lated to give very similitude to an otherwise bald and  
24 unconvincing narrative". That is what happened here.

25 This was a bald and unconvincing narrative so

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2 how do you do it? You tell about Heckel & Jeckel and  
3 who was there and Pfingst ordered Perriot water and this  
4 guy ordered scotch and soda. That is the way liars work.  
5 Of course, it is true, I even remember what he ordered.  
6 of course it is true, I remember what he said..

7 But there are two things wrong with it.

8 The first thing that is wrong with it is that  
9 Mr. Allen wasn't there. No way Mr. Allen, whose words are  
10 described to you in circumstantial detail by this incredible  
11 perjurer, D'Onofrio, no way Mr. Allen could be there.  
12 Why not?

13 We are not going to take anybody's word for that.  
14 I asked Mr. Allen did you go to Switzerland in June 1968?  
15 No, he says, I didn't go. I wasn't at the Baur au Lac.  
16 He says, I couldn't go because I was under bail in the court  
17 house and they wouldn't let me go and in comes a piece of  
18 paper, ladies and gentlemen, which you are free to call  
19 for and examine and the proof is he was right here in  
20 New York trying to get permission to travel which he didn't  
21 get until a long time later.

22 So Allen wasn't there and the Baur au Lack story  
23 starts to fall apart with that. It falls apart a little  
24 worse later on.

25 So maybe Mr. Allen, realizing that the cup of

jqbr 5

perjury, the cup of improvised, contrived falsehood was beginning to overflow a little, maybe Mr. Allen got scared. Maybe he was more scared of getting on that stand and committing the kind of perjuries that were being put into his mouth by somebody than he was of going to jail for the crimes he committed in the past. Because I don't like Mr. Allen. You understand, ladies and gentlemen, I am not representing Mr. Allen to you as a model citizen. Mr. Allen -- I don't think he is as bad as D'Onofrio, because at least Mr. Allen, you know, when he sees something stinks he runs away from it, not D'Onofrio.

So the theory of the case began to collapse. There was another infirmity in the Baur au Lack story that made it collapse, and that was this incredible yarn about Pfingst.

Now I want to talk to you people about Mr. Pfingst because in many ways Mr. Pfingst is the most important witness in the case.

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2 Pfingst is a lawyer, was a lawyer, an ex-judge,  
3 a man that was convicted of a bankruptcy offense on the  
4 testimony of D'Onofrio.

5 If you hear him -- I don't know anything about  
6 that case. I may have been guilty, he may have been not  
7 guilty. He may have been a victim of D'Onofrio's perjury,  
8 he may not. I don't know.

9 Certainly we know this: He was a lawyer and  
10 he was convicted of a bankruptcy offense. He was the man  
11 who was supposed to be with Allen, the absent participant,  
12 and SToller, and D'Onofrio at the meeting at the Baur au  
13 Lac when the whole scheme was hatched up. He says it  
14 didn't happen.

15 I wasn't there. Something significant  
16 about Mr. Pfingst's testimony.

17 You heard him say: I have talked with Mr.  
18 Sorkin several times in the last few years. Quite  
19 recently I talked with Mr. Sorkin. No, he never asked me  
20 anything about Training With the Pros.

21 I want you to use your own good sense. Here  
22 is this incredible lawyer, this self-confessed perjurer.  
23 this monster, this fantacist, this D'Onofrio, and he says  
24 there was a meeting at the Baur au Lac on June 8th,  
25 9th, 10th, and I will not only tell you what everybody said,

1 gabr 2

2 which is a great feat -- you try that. You try it.

3 You go back to the most important thing that  
4 happened to you in the year 1968, the most important  
5 meeting you had and try to remember what A said to B or B  
6 said to C or whether he ordered scotch and soda or  
7 Perriot and water. Try it, see what happens in your mind.

8 Here is this fellow who says these things.

9 We now now that one of them wasn't there, Mr. Allen, that  
10 he says, and the other, the only possible corroborating  
11 witness for D'Onofrio, the only man who can say, yes,  
12 it happened, right under the government's nose, talks to  
13 Sorkin and Sorkin never says to him: By the way, Mr.  
14 Pfingst, there has been some testimony given in which you  
15 are described as having participated in a meeting at the  
16 Baur au Lac. Would you be good enough to tell us what  
17 happened? They never ask him.

18 Why do you think they didn't ask him?

19 They didn't ask him because they knew it was a lie, because  
20 they knew it was an improvisation, because they knew it was con-  
21 trived.

22 And if you asked Mr. Pfingst, and Mr. Pfingst says  
23 that it is a lot of baloney, nothing like that ever  
24 happened. The whole thing caves in. He has got to go  
25 to his superiors and he has got to say to them, my God, we have



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2 done something terrible, we are erecting this vast  
3 structure on the testimony of D'Onofrio, and one guy tells  
4 me it didn't happen, he wasn't there, and we know he  
5 couldn't have been there and the other fellow says it  
6 didn't happen.

7 The other fellow, they can't lay a hand on him.  
8 He has served his time. There is nothing they can hold  
9 him on. He didn't have any sentence hanging over him,  
10 he doesn't have any indictments hanging over him. He  
11 doesn't want their money. He is not for sale. He is not  
12 for hire and he comes in here and he says to you, ladies  
13 and gentlemen, yes, I heard that the defense wanted me  
14 but I wouldn't talk to them, I wouldn't talk to anybody.

15 He said, if you want me, bring me into the  
16 courtroom.

17 Now, ladies and gentlemen, I put that man  
18 on the witness stand cold. You heard from him. He  
19 wouldn't tell us what he was going to say.

20 But I had so much confidence, so much faith in  
21 the falsehood, so much faith that D'Onofrio was a liar  
22 and that anybody that I brought in would put the lie in his  
23 mouth, that I put Judge Pfingst on the stand, Mr. Pfingst  
24 on the stand, without even ever seeing him or talking to  
25 him.

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2 And out it came, all an invention. I think  
3 those were the words he used, all invted, all improvised,  
4 all lies. There was no such meeting and indeed there couldn't  
5 have been a meeting.

6 Who is Pfingst? After all, what does  
7 Pfingst know about it? Pfingst just happens to be the  
8 lawyer for Training With the Pros. All during the fall of  
9 1968 Pfingst is the fellow who is in charge of this  
10 project of bringing them public. D'Onofrio brought him in  
11 to do this job. Nothing like that ever happened.

12 What's he got to be afraid of? Why should he  
13 lie? Did you hear him cross examined? Did anybody lay a  
14 hand on him? Did anybody shake one word of what he said?  
15 Why should he lie?

16 Something else. This D'Onofrio, the whole  
17 thing was beginning to collapse inward on him because of the  
18 elemental corruption of the man D'Onofrio.

19 The other thing, this silly letter of intent.  
20 Oh, he tells a circular story about it. In fact, he tells  
21 you he sat there and saw Pfingst write it out on yellow  
22 sheets in longhand. Baloney says Pfingst, I never had any-  
23 thing to do with that letter, I never saw that letter. That  
24 letter is important to D'Onofrio's narrative. Remember,  
25 the way D'Onofrio tell's the story in the beginning, before



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2 we know what Miss Herzfeld is going to remember, D'Onofrio's  
3 story is Frank said I will destroy the letter. So he has  
4 got to tell in the early part of the trial how this letter  
5 was devised. The letter is the link to Frank. But Pfingst  
6 says what letter? He never heard of any such letter.  
7 I never had anything to do with it. What is all this  
8 baloney about me sitting and writing it out in longhand  
9 with D'Onofrio? I have no doubt where the letter came from.  
10 I am improvising. I am guessing. And you have a right to  
11 guess, too, where the letter came from.

12

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gab-1

3251

1 gab-1  
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3 When D'Onofrio who had his own relationship  
4 with the Bank Hofmann, as was testified abundantly in this  
5 case, when he heard that there was going to be a deal,  
6 Training With the Pros, he didn't know how many shares and  
7 he didn't know what price, he didn't do anything about it.  
8 He wanted to get the credit for putting Bank Hofmann into the  
9 whole deal. He got Bank Hofmann to write that letter,  
10 not Pfingst, not Stoller, not Frank, not anybody, D'Onofrio,  
11 but he has got to tell this story to get Frank into the  
12 picture.

13 So, again, that collapses.

14 Now I am going to sit here this afternoon and  
15 I am going to await with great interest how Mr. Sorkin is  
16 going to address you later, how he explains this circumstant-  
17 ial story about a meeting at the Bau au Lac and who said  
18 what and who ordered what for drinks, and all the Heckel and  
19 Jeckel baloney. I am going to try to figure out how he  
20 explains that.

21 Well, he is probably going to say, poor Mr.  
22 D'Onofrio, he was mistaken in the date. Maybe it didn't happen  
23 in June, maybe it happened in July after Allen got permission  
24 from his Government, got permission to go because he couldn't  
25 have been there in June. Maybe it happened that way. He  
will give you several maybes.

1 gab-2

2 Ladies and gentlemen, I suggest to you that  
3 there are no maybes, there are no maybes which can explain  
4 this crude, transparent nonsense about who ordered what  
5 for drinks and who said this and and how he said, "Joe, why  
6 don't you take a walk while Phil and I talk it over."

7 Phil said, "I don't want any lawyers for partners."

8 You remember the language that was improvised.  
9 You remember the foul language, how he puts words into  
10 Stoller's mouth. That is calculated to make you think that  
11 Stoller is a thug, he is a bad man, this is the way he  
12 talks, you know, like Edward G. Robinson in the movies, or  
13 Jimmie Cagney, something like that. This is a fantasist.  
14 This is a tremendous fantasist. This is a great liar, this  
15 is Iago destroying people with lies.

16 So he puts those words into Mr. Stoller's mouth  
17 to make him out to be a crude, rough character.

18 Just as true as who ordered the Perrerrria, just  
19 as true as whether Mr. Allen was at the meeting, just as  
20 true as what Mr. Pfingst has to say about it, and I will give  
21 you the last word on the great meeting at the Baur au Lac.

22 Remember, this is a very important meeting at the  
23 Baur au Lac. This just isn't a casual encounter among  
24 confederates in a criminal scheme. This is the meeting  
25 at which plan is made to manipulate, the plan is made what

1 gab-3

2 we are going to do, how we are going to run the stock up,  
3 how we are going to blow it off.

4 Here is Mr. Pfingst. I read him the whole con-  
5 versation.

6 "Did you ever have such a conversation?

7 "A It is pure invention. Never did I participate  
8 in any such conversation, never either in Switzerland  
9 or in America or anywhere else."

10 Then I asked him more. I asked him about the  
11 Elinors, the thing that this miserable creature injected into  
12 this case, the Elinors, you remember.

13 "Did you ever hear anything like that?

14 "A No, I never heard anything like that, pure in-  
15 vention, lies.

16 "Q Did you ever hear anything like that?

17 "A No.

18 "Q Anything remotely like that?

19 "A No.

20 "Q Did you ever hear anything like that again?

21 "A This is the first time I am hearing anything  
22 even remotely resembling that."

23 He is telling the truth. He wouldn't talk to  
24 me.

25 Sorkin was afraid to talk to him. Never did

1 Sorkin go near this man.

2 "This is the first time I am hearing anything even  
3 remotely resembling that.

4 "Q Did you ever participate in such a conversation?  
5

6 "A bo, not at all. This is pure invention."

7 Now, let me come back to that famous letter,  
8 Government Exhibit 4, the letter of October 17 that Mr.  
9 Pfingst is supposed to have written. My colleague, Mr.  
10 Feldshuh, had something to say about it yesterday, but it  
11 is too good. I got to use it. I got to remind you about it.

12 This is the letter, you see, that is supposed to  
13 be in this case for the purpose of establishing the  
14 criminality of Frank. I don't represent Frank, I represent  
15 Mr. Stoller. But infamy is infamy, lies are lies, perjury  
16 is perjury, disease is disease. This is a plague-ridden  
17 case and it concerns me that anybody should be infected by  
18 what has been going on here.

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End 3B

Tk 4A

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Here is the letter. The letter says that the Bank Hofmann hears that you are going to go public and no matter what the price is, because they don't mention the price, no matter how many shares come out we want to get 30,000 shares.

Only a D'Onofrio could have gotten the bank to write a letter like this because this is nonsense. This is idiocy. But it becomes important in this case only because of the testimony of its alleged destruction through the agency of the bad man, Frank, who happens to be the co-conspirator and confederate of the other bad man, Stoller.

Let's see what we know about the letter. Mr. Moss is gone. We can't ask him about it, but Miss Herzfeld, Mr. Moss' associate, is still breathing, extant, alive. And the Government brings her in here. And she says that after Mr. Moss came back from the meeting with the SEC in May of 1969, he brought Government Exhibit 4 back with him. Then she says he turned it over to her.

"Q With regard to Government Exhibit 4, did you put that in the files of the company?

"A Yes." And she says she kept the file.

"Q So that the original of Government Exhibit 4 in evidence was in the file that you took down to Florida in 1971."

So we know up until '71, long after Mr. Frank is

1 supposed to have engaged in this criminal scheme to destroy  
2 this damaging piece of evidence, a copy of which reposed  
3 in the files of the SEC, it was there, it was marked in evidence.  
4 We know it was still alive in '71.

5  
6 Now later on in the trial when the pieces of the  
7 roof are beginning to fall in on this vicious fabricator,  
8 along comes the Government, and I am going to read you a stipu-  
9 lation that we made about this letter that was destroyed  
10 at the instance and through the agency of the bad man Frank.

11 The Government stipulates -- and this is me  
12 talking -- the Government is now prepared to stipulate  
13 that if the witness Marilyn Herzfeld were recalled she would  
14 testify that she now remembers after having reviewed her  
15 files that in the latter part of 1972 she personally dis-  
16 carded the original Bank Hofmann indication letter that is  
17 Government Exhibit 4, the document dated October 17, '68,  
18 along with the other papers and she would further testify  
19 that she did this on her own without any directions from  
20 anybody.

21 " Mr. Sorkin: We so stipulate."

22 You bet he so stipulated. If he hadn't stipulated  
23 we would have brought the woman back and you would have  
24 heard what her testimony was. Their witness, their witness.  
25 I suggest something else to you.



1 gb-3

2 I must suggest to you that maybe she was never  
3 asked about the letter when she was interrogated with respect  
4 to other conversations because maybe they knew that the fable  
5 about the destruction of the letter wasn't going to stand  
6 up and maybe we could keep it out of the case.

7 But they couldn't keep it out of the case. It  
8 came in and it was flung right in their faces and it is a  
9 lie. It is an improvisation. It is a piece of falsehood.  
10 And it stamps D'Onofrio and whoever collaborated with him  
11 in the construction and fabrication of this case -- it stamps  
12 them as liars, evil people who put together lies to destroy  
13 the innocent.

14 This letter -- it is a disgrace that the Govern-  
15 ment would bring in a thing like this and ask you to swallow  
16 this kind of nonsense.

17 I put it to you, ladies and gentlemen, that  
18 there is no way in which a conscientious investigator concerned  
19 only with the truth could have avoided questioning Mr. Pfingst  
20 about his presence at the Bau au Lac or questioning Miss  
21 Herzfeld about the destruction of the letter.

22 I suggest to you that the admitted failure of the  
23 Government to do that puts the stamp on this case that per-  
24 vades it from the beginning to the end. I want to leave  
25 this subject, but before I do I want to read you from what



1 qb-4

2 Mr. Pfingst had to say. I asked him, "Have you seen Mr.  
3 Sorkin in the last five or six years?"

4 "A Yes, I have.

5 "Q Did you have a conversation with him about certain  
6 transactions?

7 "A Yes, I did.

8 "Q At any time did he ever ask you any questions  
9 about Training With the Pros?

10 "A No, he did not.

11 "A Has anybody connected with the United States  
12 Government asked you any questions about Training With the  
13 Pros?

14 "A No."

15 And now get this one. "Mr. Sorkin at one occasion  
16 mentioned Training with the Pros in my presence, but never  
17 asked me any questions about it.

18 "Q Did he ever ask you whether you were at the  
19 Baur au Lac at a meeting with D'Onofrio and Stoller and Allen  
20 at which Training With the Pros was discussion?

21 "A No, he never asked me."

22 Ladies and gentlemen, how can it be? If you  
23 have a D'Onofrio and now along comes a Pfingst, how can you  
24 not say to him were you at the Baur au Lac, were you at the  
25 meeting, were you at the War Council, were you at the planning

qb-5

1 session? How can you not? I will tell you how. I  
2 know. Don't confuse me with the facts. I don't want  
3 to know that the meeting didn't take place. I don't want  
4 you to tell me that the meeting didn't take place. I don't  
5 want you to tell me that you weren't there, because if you  
6 tell me all of my confidence in this hired assassin, D'Onofrio,  
7 will go out.  
8

9 How can I go forward if Pfingst says he wasn't  
10 there, because they must have known by that time that Allen  
11 wasn't there. I assume they read their own papers. That  
12 is how they did it.

13 I come to the subject which to me is the most  
14 painful in this case. I must say, using my words very care-  
15 fully, you know, I don't enjoy this castigation of the Govern-  
16 ment. It happens to be my Government as well as your Govern-  
17 ment. I did the same kind of work this fellow is doing.  
18 I was a prosecutor once. I was proud of what I did. I did  
19 it with pride. I did it with professional, I hope, skill.  
20 But always with professional honor. It is a cause of pain  
21 to me to have to fight with these fellows. I have been living  
22 with men like these all my life. I have trained hundreds of  
23 them over these 40 years of practice. I am proud of that and  
24 when I encounter the subject that I am about to expose to you  
25 I am ashamed. Let me tell you what I am talking about.

End 4A

1 jqbr 1

t4b am

2 You remember, ladies and gentlemen, that  
3 early on in the cross examination of Mr. D'Onofrio there  
4 appeared a piece of paper and I bet you were all surprised,  
5 this is Stoller Exhibit B. I urge you, ladies and gentle-  
6 men, take a look at this. Get it and read it in the jury  
7 room because I will suggest to you that none of you ever  
8 dreamt that this kind of leprous infamy goes on, that our  
9 money is used for this. This is a memorandum by a man  
10 named Mr. Morvillo. Mr. Morvillo at the time he wrote  
11 this memorandum was the chief of the criminal division in the  
12 United States Attorney's office. He was Mr. Sorkin's  
13 superior. He makes a memorandum about a telephone conver-  
14 sation he had with Mr. D'Onofrio. The memorandum  
15 says "I talked to D'Onofrio and one or the other Assistants  
16 was in the room when I talked to him, D'Onofrio was calling  
17 from Europe, I forget where, and he says "I reviewed with  
18 D'Onofrio from the request he had made in a prior conversation  
19 of September 28th." This is October 3rd, the memo. Now,  
20 on September 28, according to Morvillo D'Onofrio called  
21 him and he says "Mr. Morvillo, I am ready to come back  
22 and be your slave, do whatever you want. This is all I  
23 want." I didn't make that up, I am reading it. He says  
24 "I want my passport back, I want the right to travel freely,  
25 I want the perjury complaint dismissed."

1 jgbr 2

2 Now he comes to a dilly "I want veto power  
3 over the defendants in indictments that I will help you  
4 obtain." In other words, I, D'Onofrio, want to tell you  
5 whom you should indict and whom you should not indict.  
6 They have words for this kind of arrogance in many  
7 languages. He wants certain civil matters that the SEC  
8 set aside against him and his family. He wants transaction  
9 immunity for SEC crimes. Hewants no jail time for cases that  
10 he pleads guilty to. Why should he go to jail, I think they  
11 ought to erect a monument to him.

12 He wantssupport for a pardon for past crimes.  
13 Hooray for D'Onofrio, this is written in 1972 and that  
14 early he has the sense to ask for a pardon. No civil or  
15 criminal tax problems with the Internal Revenue Service.  
16 That is all right. That is normal.

17 U.S. Marshal to accompany him on trips, govern-  
18 ment protection for himself and his family if needed, and  
19 now you come to the key, travel expenses and weekly  
20 stipend of \$1500 per week. You would expect that when  
21 Mr. Morvillo, this diligent government officer who  
22 is being paid by the taxpayers, you would expect that when  
23 he got this he would say "What kind of lunacy is this,  
24 we don't make deals like this with rats. You don't make  
25 deals like thiswith social vermin. You don't pay him

1 jqbr 3

2 1500 bucks a week."

3 No, says Mr. Morvillo, he doesn't have this  
4 kind of indignation. He says as to 1 and 2 I will give  
5 him back his passport. He can travel where he wants as  
6 long as he tells us where he is going and we can get in  
7 touch with him. And, he says, about a few other things,  
8 we can do this, we can't do that. WE would give him  
9 support in his efforts to gain some sort of pardon. But  
10 the most important thing is, at thispoint D'Onofriom stated  
11 he would give us three men who evaded taxes amounting to  
12 \$750,000 which would make up for what he didn't pay.  
13 That is a good way of paying your income taxes. I recom-  
14 mend it to you, ladies and gentlemen, if you don't feel  
15 like paying the money see if you can cook up some deal and  
16 say excuse me, I am giving you a fewvictims.

17 Now we get to the money. What money? Money  
18 among these delicate fastidious government people who are  
19 the guardians of our security, the guardians of the integrity  
20 of our courts? Money? Let's see. As to 9 and 10, if he  
21 needed protection, says Morvillo, he could get it from the  
22 Department of Justice. But prevailing rates of compensation  
23 were roughly 800 to \$1000 per month for a man in his situ-  
24 ation with three to four children. I will bet you didn't  
25 know that there was a prevailing rate for stool pigeons in

1 jqbr

3273

2 the United States Attorney's Office.

3 I wonder if they have a union. I wonder how this  
4 was negotiated. I wonder how they arrived at the prevailing  
5 rate. That ain't bad, \$1,000 a month. If you come back  
6 and you turn in people and you give us some people who can  
7 be stuck for income taxes you don't have to pay taxes and  
8 we will pay you 800 to \$1,000 a month.

9 Oh, there was something else. Forgive me, we  
10 are going to come to this one. We would recompense him  
11 for trips he made for investigative purposes. You hear that,  
12 trips he made for investigative purposes.

13 In other words, if D'Onofrio would say to  
14 him "Mr. Morvillo or Mr. Sorkin, or whoever was the genius  
15 who was operating this character at the particular time,  
16 he would say I think there is a fellow in Seattle. I would  
17 like to go out there, will you please pay me for the trip,"  
18 that would be all right. So this is what he wants.

19 You remember he says to him 800 to \$1,000 a month.  
20 He doesn't get it. He doesn't get it, the prevailing rate,  
21 it develops, is something different from what Mr. Morvillo  
22 said. Maybe it went up with the inflation between 1972 and  
23 1973. Let's see what he got.



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3274

Ladies and gentlemen, we come to what I think is the ultimate infamy in this case, the thing that disgusts me in this case.

Question cross examination of D'Onofrio:

"Q Did you get any money from the government since 1973?

"A I get witness fees and travel expenses."

And I'll bet you thoguht that meant 20 bucks a day and his railroad fare or his airplane fair or something like that.

I said "nothing else"?

"Yes, I did get money from the government once or twice."

"Q How much money have you got from the government?

"A I got 65 cents once from Ira Lee Sorkin in exchange for a pastrami sandwich and a hot cup of tea and a free meal at a meeting with four FBI agents.

"Q That's all you got?

"A Witness fees and per diem expenses, yes.

"Q How much per day did you get?

"A \$20 as a witness \$16 additional if I stay overnight.

"Q And they pay some expenses for you?

"A No, sir.

1 gabr

3275

2 "Q Do you pay your own hotel?

3 "A I pay my own hotel.

4 "Q You do?

5 "A Yes, sir."

6 That's the man's testimony. And you will  
7 remember that when he was finished lying about that, I asked  
8 for the vouchers because, you know, you can't get money  
9 without signing some kind of piece of paper. There has  
10 got to be a voucher. And so we were told some cock and  
11 bull stories about the vouchers, but long after they  
12 appeared, I think it took two weeks to find these in this  
13 building, maybe even three weeks. I don't remember.  
14 It was a long time.

15 Miraculous to relate, here they are.

16 What did Mr. D'Onofrio get according to the  
17 vouchers? The pastrami sandwich, the hot cup of tea?

18 \$31,588.10 over the period, 17 months, \$31,000.  
19 I would say that's better than what the prevailing rate  
20 was according to Mr. Morvillo.

21 Oh, but maybe I thought, maybe the answer is  
22 that the \$31,000 was reimbursement for travel expenses, in  
23 which case you would expect that there would be like some  
24 airplane tickets, like some hotel bills. I tell you what  
25 I do sometime. You try it with an internal revenue agent

1 gabr

3276

2 and you say: That's a business expense, that is \$200.

3 I had to go to Las Vegas and come back on business.

4 He says where is the airplane ticket? Where  
5 is the hotel bill? No airplane ticket, no hotel bill, no  
6 business expenses. No airplane tickets, no hotel bills,  
7 no nothing.

8 I asked the marshal who brought these in, a  
9 perfectly decent man, all he does is keep records. Sorkin  
10 signs a voucher that the man was here, he pays him. Sorkin  
11 certifies that the man came from Las Vegas. You will see  
12 something about that in a moment, and he pays him.

13 I asked the marshal, Mr. Adams, "Do you have  
14 any backup material in your files on this, such as airline  
15 tickets, hotel bills, anything like that?"

16 "No."

17 "Q This" referring to the exhibit, Stoller Exhibit  
18 AA -- "This is all you have?

19 "A Yes, sir."

20 Well now, I was worried about this. This is  
21 too raw. Some pastrami sandwich for 31,000 bucks. So I  
22 worried about it. I didn't want to make this accusation  
23 that they had stolen money from the government, that there  
24 had been such a misuse of federal funds.

25 So I put my friend Mr. John Grimes to work to see

1 gabr

3277

2 if maybe somehow we could justify this thing.

3 Now, ladies and gentlemen, there is another  
4 exhibit in the case and the significance of it may have been  
5 lost on you. I am not going to go through the whole thing  
6 because I have too many things to talk to you about.  
7 I don't want to take the time.

8 I suggest you ask for this exhibit. This is  
9 Stoller Exhibit AD. Let me show you what happened.  
10 I am going to take a few at random here. This is the exhibit.  
11 It is all here.

12 If you take this exhibit and you take those  
13 vouchers, you will see, that on Friday, June 7, Mr.  
14 D'Onofrio is here for four days and he got \$660 from the  
15 marshal's office and then he says he went home for the  
16 weekend and came back the following week and he got another  
17 \$660 at the end of that week.

18 So at the best they paid him to spend the weekend  
19 in Las Vegas. I don't think he was in Las Vegas. We will  
20 come to that in a moment because you remember this little  
21 pied-a-terre that he had in Las Vegas. He said to him --  
22 we will come back to this -- I said to him,  
23 "Where do you live?" He says "My official residence  
24 is in Las Vegas."

25 Listen to that answer. I am going to ask you,

1 gabr

3278

2 "Where do you live?"

3 "I live in three places now. My official  
4 residence is Las Vegas. When I come into New York for the  
5 government, I can't get a hotel at \$16 a day." So he  
6 stays with his mother in Lindenhurst, he says.

7 Now, I said to him, "Your official residence  
8 is in Las Vegas?"

9 "Yes."

10 "You have an apartment there?"

11 "I have a room."

12 I mean, after all, you know, he is only getting  
13 this pittance from the government, so he lives in a  
14 room in Las Vegas.

15 "You have a room? Is that a room at 4507-  
16 Buckeye Avenue?"

17 He says, "I have a room in the home of my  
18 secretary and her husband."

19 "Is that Mr. Roister?"

20 "Yes, sir."

21 "Mr. Roister's wife is your secretary?"

22 "In my company, the company I work for."

23 "Do you know Mr. Roister?"

24 "A I never met him."

25 "Never met your landlord?"

1 gabr

3279

2 Well, it is all right. I suppose that happens.  
3 Maybe he works in the night time and you work in the day  
4 time. Never met him.

5 "Have you ever seen him?"

6 And out comes the clincher.

7 "Have you ever been in the room at 4507 Buckeye  
8 Avenue?

9 "A Yes, sir.

10 "How many times?

11 "Once, sir."

12 Once, and he is getting \$660 a week from the  
13 govenment for going back and forth to spend his weekends in  
14 Las Vegas and he's been in a room once. That's nothing.  
15 That's nothing. We will come back to that.

16 Let's see. Let's pick a few at random, how this  
17 fellow got paid. Here is one. This is a dilly.  
18 This is March 1974. In March 1974, on Friday afternoon,  
19 with the voucher signed by Mr. Sorkin, this guy gets  
20 \$696 from the government, 500 odd dollars of which is sup-  
21 posed to be reimbursement for Las Vegas to the room he was  
22 in once.

23 On Monday morning he is back. So he got 696  
24 bucks. They paid him to go to Las Vegas for the weekend  
25 because the following week he gets paid again.

1 gabr

3280

2 We went through all of these. Here is one that  
3 is incredible.

4 On the afternoon of January 18 he gets \$676.  
5 That is a Friday. He's back on Sunday.

6 On Friday, November 2, 696. He's back on  
7 Monday.

8 The next week, the following week, another  
9 696, back on Monday.

10 The next week, 696, he gets the money on a  
11 Friday afternoon and he is back on Sunday, not Monday.

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1 gab-1  
2 That one is worth looking at. That one you  
3 look in the exhibit, ladies and gentlemen, and here is a  
4 memorandum to the United States marshal by Ira Lee Sorkin.

5 "I take the responsibility for calling Ramon  
6 D'Onofrio back from Las Vegas, Nevada, to the Southern  
7 District of New York for November 19, 1973. The enclosed  
8 voucher is true and accurate."

9 I suggest to you, ladies and gentlemen, that  
10 the enclosed voucher is not true and accurate. I suggest to  
11 you that Mr. D'Onofrio never left the city of New York on  
12 any of those trips. I suggest to you that if he had there  
13 would be airplane tickets, and you remember the elaborate  
14 fuss that was made because Allen said, "I was in your office  
15 until late in the evening," and they brought back the two  
16 fellows who arrested him and the guard from upstairs and all  
17 they had to do to turn this phony into something legitimate  
18 was to produce a few airplane tickets.

19 Did you see them? Is it possible that the  
20 Government with its vast investigative resources is unable to  
21 prove that the man didn't lie when he said he got a pastrami  
22 sandwich, that the man didn't lie when he said he only  
23 got witness fees, that the \$31,000 was expended for legitimate  
24 travel?

25 Is it possible that they can't do it? The answer

1 gab-2

2 I suggest to you is a very simple but very arresting and  
3 very disturbing one.

4 The answer is, ladies and gentlemen, to be found  
5 in the Morvillo memorandum. The answer is, yes, Mr. Stooly,  
6 yes, Mr. Iago, yes, Mr. Perjurer, we will pay you for your  
7 lies, but something happened to the prevailing rate. Instead  
8 of being a thousand dollars a month for somebody with two  
9 children, it turned out into something a little more sig-  
10 nificant and that is the way this man got paid for his testi-  
11 mony in this case, and the Government in the possession of  
12 these vouchers, in the knowledge of what we were charging  
13 didn't put a witness on the stand to prove an airplane  
14 ticket or a hotel bill or the legitimate expenditure of two  
15 cents.

16 This man was entitled to \$20 a day and actual  
17 mileage. And I suggest to you, ladies and gentlemen, that you  
18 and I are the victims of this kind of thing.

19 This was a hired assassin, hired by the United  
20 States Government for \$31,000 to destroy people. Pastrami  
21 sandwich, indeed. I mean, how much do they expect people  
22 to swallow?

23 Now, let's go on. We know beyond question that  
24 there came a moment in the preparation of this case when the  
25 case tottered. When is that? They are taking precautions.

gab-3

1 they are staying away from Marilyn Herzfeld, they are staying  
2 away from Pfingst.  
3

4 This case tottered when Mr. Allen refuses to go,  
5 for whatever reason.

6 Let me digress, ladies and gentlemen. I am not  
7 child. I have been at this game as I have told you a long  
8 time on both sides of the fence. I don't expect the Govern-  
9 ment to make criminal cases out of the mouths of bishops  
10 or clergyman or saints or anybody like that. I know when  
11 we get into this kind of field, inevitably jurors and Judges  
12 and lawyers must listen to testimony from bad people, and  
13 very often we get bad people who are trying to do the right  
14 thing, trying to tell the truth.

15 This one, this D'Onofrio, he would like you to  
16 believe, despite his admitted perjuries and his crimes,  
17 despite his lies here in the courtroom, in your presence, despite  
18 this incredible filth about the meeting in Baur au Lac,  
19 this piece of affrontery about the pastrami sandwich, despite  
20 all that he would really like you to believe that something  
21 has happened, he has been regenerated like St. Paul on the  
22 road to Damascus. The light is gleaned on him and he  
23 now wants to be a good man.

24 Here is his road to Damascus. I asked him, playing  
25 around with him a little about his change in attitude.

1 gab-4

2 "There came a time, as I understand you, when  
3 you decided not to do that sort of thing any more?

4 "A Yes, sir.

5 "Q And that change in your attitude came about when?"

6 You know, every time I read from this guy's  
7 collected works, I can't help thinking about that fantasy he  
8 gave you about Zambia. Remember with the girl that he wasn't  
9 sure he would recognize, because he was afraid I had her  
10 waiting in the wings and I would bring her in.

11 Listen to this fellow's prose style. It is  
12 fantastic.

13 "That change in your attitude, when did that come  
14 about?

15 "On my 55th day in solitary confinement in  
16 Her Majesty's prison in Pentonville."

17 I really appreciate that little touch about  
18 his respect for royalty. It was in Her Magjesty's prison.

19 "Can you give me the approximate date of that?

20 "A About May 1, 1973. I figured I had had  
21 enough.

22 "Q So that we are clear, are we not, that up to May  
23 1, 1973, you were engaged in this criminal activity and you  
24 decided to give it up?  
25

1 gab-5

2 "A That is correct.

3 "Q To reform," to rehabilitate -- I said "to reform."  
4 You know, my own way, "to reform," I said.

5 He said, "Yes, to rehabilitate myself and live  
6 like a human being for the rest of my life."

7 And I asked him, "You wanted nothing for this  
8 except the sense that you were doing the right thing, is that  
9 correct?"

10 "A I wanted nothing, sir. No compensation, no  
11 money."

12 That is what this man said right in front of you.  
13 Here it is right in the record. You can see this. You can  
14 have it read to you.

15 Then he comes in here, this man who wanted nothing,  
16 who got the pastrami sandwich. He got 31,000 bucks from  
17 the Government on -- I use the word carefully -- on false  
18 unsupported, undocumented vouchers, \$31,000 over that period.

19 I know a lot of honest people who worked awfully  
20 hard who didn't make \$31,000. Tax free, tax free, because  
21 this is reimbursement of his expense.

22 I don't know many people that make that kind of  
23 money. I can hire some pretty good lawyers for that  
24 kind of money, but that is what this guy got for committing  
25 perjury right in front of you.

End 5B

Tk 6A

1 qb-1

2 That is the reward he got for telling you  
3 incredible yarns like Zambia, like Heckel and Jeckel, like  
4 theBaur au Lac, like the letter that Frank destroyed. He  
5 got paid for that money. Not only did he get paid for it,  
6 he doesn't have to pay his income taxes. He has some kind  
7 of deal with them, I don't remember just what it was because  
8 I don't know whether the proposal he made with Morvillo  
9 worked out, if he turned in his neighbors he didn't have to  
10 pay taxes.

11 This is pretty good business, isn't it? Why  
12 do I emphasize this? Because, ladies and gentlemen, your  
13 office, your function, your responsibility is to destroy human  
14 beings, to extinguish them, to put them in a class by them-  
15 selves, convicted felons, a lawyer, a man with an unblemished  
16 reputation, my man.

17 And you are supposed to destroy them on the testi-  
18 mony of this monster? I wonder at the affrontery of the  
19 Government in bringing this case here.

20 Now the thing begins to fall apart with Allen.  
21 Allen doesn't back D'Onofrio up and we don't know where Allen  
22 is, whee he stands and what he is going to do. We will  
23 come back to that in a minute because it is very important.  
24 So with the collapse of Allen we have got to go to another  
25

1 witness to support D'Onofrio. I really don't want to  
2 talk about D'Onofrio any more. I am torn between nausea  
3 and amusement when I talk about him, and indignation that  
4 they would dare to do that.  
5

6 Let's go to the other witness. Let's go to Mr.  
7 Bonavia.

8 Oh, there is a rare specimen of the American  
9 businessman in action, the entrepreneur, the tycoon. What  
10 do we know about Mr. Bonavia? Let's talk a little generally  
11 first about this charming, delightful specimen of the  
12 American industrialist in action.

13 Well, he had the Swiss bank accounts from '68  
14 through '72. There is nothing wrong with that. There is  
15 nothing wrong in an American citizen having a Swiss bank  
16 account. I can give you ten thousand good reasons why an  
17 American citizen should have a Swiss bank account. But  
18 Mr. Bonavia, he didn't report his transactions in the Swiss  
19 bank account. That is different. I can have a Swiss bank  
20 account and you can have a Swiss bank account and you and you,  
21 there is nothing wrong as long as we report it.

22 But he didn't report it. He is something special.  
23 He says that in 1973 he voluntarily -- and this is a quote  
24 from Page 1606 of the record -- he says that in 1973 I  
25 voluntarily brought my records to the U. S. Attorney's office  
in New York. They were not subpoenaed.



1 qb-3

2 I am reading it slowly and carefully because that  
3 is exactly what it says. It happens to be a lie. They were  
4 subpoenaed, they were not brought in voluntarily. There  
5 was a subpoena.

6 If you don't believe what I am telling you, if  
7 you think it possible that I could improvise anything as  
8 terrible as that, take a look at the subpoena, Stoller Exhibit  
9 S.

10 Good heavens, on October 23 there was a subpoena  
11 issued asking this meretricious slob, this liar, to bring  
12 in copies of his Federal income tax returns and all kinds  
13 of stuff about Training With the Pros, about relationships  
14 with Allen, with Stoller, with D'Onofrio, with Brod -- oh,  
15 my goodness, with Joseph Pfingst. Imagine, they knew about  
16 Joseph Pfingst when they issued this subpoena on October 23,  
17 1973.

18 It must have slipped. They didn't ask him any-  
19 thing about Training With the Pros. There it is. When he  
20 says I brought them in voluntarily, it is a lie. It is  
21 a good lie. It is a very, very important lie, as you will  
22 see in a moment. I hope you understand what happened in  
23 front of your noses. If you didn't, I don't blame you because  
24 it was a very subtle little thing. The subpoena that  
25 he got called for his income tax returns and so on.

1 qb-4  
2 Now, you see, the thrust of Bonavia's position  
3 on the witness stand and something that he had to cling to  
4 because his life depends on it was that before he voluntarily  
5 brought in his records the Government didn't know anything  
6 about him.

7 Finally, on cross-examination this ame boring,  
8 tiresome, unremitting industrious cross-examination with which  
9 I know I have plagued you many hours in this trial, we  
10 hit pay dirt. He admitted that he knew before he walked in  
11 that the Government was interested in the Swiss bank accounts.  
12 He knew that the subpoena related to the Swiss bank accounts.  
13 He knew everything that was in the subpoena. He admits  
14 it. But, he says, there was no independent evidence to sub-  
15 stantiate the fact that you had a secret bank account, Page  
16 1600 of the record.

17 The lie in his is that he came in voluntarily.  
18 Why do you think he told that lie? You see, every one of  
19 these liars has got his deal for something. D'Onofrio,  
20 I don't have to talk about his deal any more.

21 Allen told you about the kind of deals that  
22 they offered to him.

23 Now listen to this. This is March 27, 1974. We  
24 got the case by now. We know where we are going. They have  
25 been indicted and they got lawyers. It is a case. This is

1 qb-5  
2 Stoller Exhibit R, and this is a letter from one Ira Lee  
3 Sorkin to one Samuel Cannariato, Esq., who has been identi-  
4 fied in the record as the lawyer for this fellow, this pinball  
5 or bowling alley operator, Bonavia, the hick from Illinois,  
6 who didn't know what he was doing.

7 He knew what he was doing here all right. Let's  
8 take a look at this letter. He writes with respect to your  
9 client Mr. Joseph Bonavia and he says the United States  
10 Attorney's office was and still is inquiring into the use of  
11 secret Swiss bank accounts to commit stock fraud and evade  
12 United States income taxes.

13 "Please be advised"-- and I suggest to you that  
14 of all the lies in this case what I am about to read to you  
15 is the biggest whopper of them all --"please be further ad-  
16 vised that when we contacted Mr. Bonavia to our knowledge  
17 he was not under any investigation by the Internal Revenue  
18 Service and that Mr. Bonavia notwithstanding this fact volun-  
19 tarily appeared" -- and let me show you the subpoena --  
20 "voluntarily appeared at the United States Attorney's office  
21 and openly admitted that he had a Swiss bank account which  
22 contained unreported taxable income." That is Sorkin in a  
23 letter. When we have a subpoena in which they ask him for  
24 this stuff before he ever showed his face in there.  
25

1 qb-5a

2 This is the letter. I am going to explain this  
3 to you. There is more to this letter than meets the eye.

4 There are no limits to the infamy in this  
5 case.

End 6A

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It should be noted, says Mr. Sorkin, that his letter, that at the time Mr. Bonavia appeared at the United States Attorney's office there was no independent evidence to substantiate the facts that Mr. Bonavia had a secret Swiss Bank account. That, ladies and gentlemen, is a lie. Because by that time they had probed the mind of D'Onofrio and I don't know who else, and they knew all about the bank account. But the most important thing is the subpoena which was issued. Let us see if this is a lie or not. I am really tantalizing you because there must be going on in your minds: Why would this fellow tell such a lie in the face of the existence of this subpoena, the documentary evidence and something else. Let us leave these here. D'Onofrio knew that Bonavia had a secret Swiss bank account. Bonavia had told him so. Reference, page 1601 of the record. Bonavia was subpoenaed in October 1973. That is the date of the subpoena. At that time D'Onofrio was cooperating fully with the government. On October 20, 1973 Mr. Bonavia had made a sworn statement in writing in which he said that Allen had informed him in 1973 -- and this is Bonavia who made a sworn statement -- Allen had informed him on October 1, 1973 that D'Onofrio had turned -- and this is a quote -- had turned full time government informer with full immunity, Stoller

1 jgbr

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2 Exhibit T.

3 MR. Alenstein reminds me, if you go back to  
4 Exhibit AD you can see that from the first of October on,  
5 all during October, D'Onofrio is in the office spilling his  
6 guts working on that tome that we are going to come back to  
7 that was used at the blueprints of the whole thing. And  
8 this is the fellow saying "We didn't have independent  
9 evidence."

10 Listen to this, Stoller Exhibit T, this is  
11 Bonavia's own statement. Allen assured me that if  
12 necessary he would appear in person. This is supposed to  
13 be October 1st, 1973. This is unbelievable. He then went  
14 on to tell me D'Onofrio, who is the promoter of Training With  
15 the Pros stock, this is the stock of Bonavia's complaint  
16 against Bank Hofmann, had turned full time government  
17 informer with full immunity.

18 So that we have it that when this letter was  
19 written the government did have independent evidence.  
20 The government knew all about it. The government had  
21 issued a subpoena and the letter is a lie when it says  
22 that he was not under stress, that he voluntarily ap-  
23 peared, that we had no independent evidence to substantiate  
24 the fact that Mr. Bonavia had a secret Swiss bank account.

25 Now, let's come to the critical question. Why?

1 jghr

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2 Why would any responsible government officer write a thing  
3 like this? I will tell you why. There is a rule. If you  
4 don't pay your income taxes, if you evade your income taxes  
5 and you come in voluntarily and you disclose it you don't  
6 get prosecuted for it. But if the government starts to  
7 investigate and then you disclose it you can be prosecuted.

8 Mr. Cannariato and this little Illinois hick  
9 that didn't know where he was to go -- he wasn't going to  
10 play unless he got this letter, unless he got the agreement  
11 from the government that they weren't going to prosecute him  
12 for income tax evasion. That is what he got for living.

13 Now, if all that I had to do was to establish  
14 a motive for that man to commit perjury here it is,  
15 the subpoena and the letter, take them and read them.  
16 Lies, lies. Not only from the witnesses but out of the  
17 mouths of government agents, people in your government  
18 drawing salaries from you and from me with our tax money  
19 who improvise filth like this and with this filth try to  
20 destroy human beings.

21 This letter is a lie. This is one of the most  
22 infamous documents I have ever seen in 40 years of practice  
23 in this court house. This Illinois hick. Do you  
24 remember this parade of naivete put on? This man who was  
25 manipulated by Stoller, who would rather commit perjury than



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take the Fifth Amendment when he was advised of this. That is all bunk. That is too sickening to even talk about. This Illinois hick who don't know what was going on, he opened the Swiss bank account way back in 1965, not through Mr. Stoller, not through Mr. Allen, through somebody else and if you have any question we got the exhibit right on the nose. Here it is, May 13, 1965, it doesn't say -- and this is Stoller Exhibit Q -- here Stoller got me to open a Swiss bank account, Allen, Frank. It takes a second to read. At the suggestion of Dr. Walter Wirth of Switzerland I have opened an account with the Bank Hofmann. This is the hick manipulated by Mr. Stoller.

THE COURT: Excuse me, would you brook a recess here?

MR. GOULD: I would not only brook it, I would welcome it, your Honor.

THE COURT: All right, ladies and gentlemen, we will take a five-minute recess.

(Recess.)

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(In open court; jury not present.)

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THE COURT: Mr. Gould and Mr. Sorkin, to go on the record here before Mr. Gould completes his summation and more importantly before he gets to Counts 14 and 16, I want to complete our dialogue on requests Nos. 14 and 15 as submitted by the defendant Stoller.

On checking I find that the government is indeed correct in relying on United States v. Marchisio, 344 F. 2d 655. In other words, the fourth element which Stoller would have me charge, to wit, that the testimony falsify, conceal a material fact is not required under existing case law in this circuit, particularly inasmuch as the government is proceeding under the second part, so-called, of Section 1001 of Title 18.

However, I would say, Mr. Sorkin, there is what I will call the prudent man rule. Since our system is constantly being changed from day to day, it could be argued that a prudent prosecutor would not press the point. I leave that, of course, up to you.

MR. SORKIN: I don't know if Mr. Gould is going to argue it. Can I take the lunch break to come back with a definitive answer for you?

THE COURT: I think you can as far as I am concerned.

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2 MR. GOULD: It would be most improper for me to  
3 argue that question in view of your Honor's ruling.

4 THE COURT: It puts him in sort of a bind.

5 MR. SORKIN: If Mr. Gould is going to argue  
6 materiality, may --

7 MR. GOULD: No.

8 THE COURT: He made the request. I am saying  
9 literally as I understand the case law it is not required.  
10 All I am asking you is to consider whether or not  
11 it is really that important to you, which if you say it  
12 is, fine, I will go along with it. It is my duty to follow  
13 the law as I understand it even though I have my doubts  
14 about it.

15 MR. SORKIN: Just one moment, your Honor.

16 (Pause.)

17 MR. SORKIN: Your Honor, the question of  
18 materiality under 1623 I don't think is a question  
19 of fact anyway. It is a question for the jury, it is a  
20 question for the Court. It is not an issue that has to  
21 be decided by the jury.

22 THE COURT: Rather than get into extensive  
23 arguments, that is again not my point. You want me to  
24 charge the four elements laid out in Marchisio. I will  
25 be prepared to do that. There is no doubt about it in my

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2 mind. There is no contest as to materiality as a practical  
3 matter. That is neither here nor there. You have answered  
4 me. you want me to charge the four elements, and I will so  
5 do it.

6 I will give the defendant Stoller an exception  
7 on request No. 14.

8 MR. GOULD Thank you, your Honor.

9 THE COURT: We turn to No. 15.

10 MR. GOULD: Is this my 15, sir?

11 THE COURT: Yes, the question from Bronston, in  
12 fact. Bronston of course dealt with, as we have  
13 discussed before, Section 1621 and not 1021. I don't  
14 believe it is applicable to this case in reading the  
15 quoted testimony. I just don't think it has anything to do  
16 with what happened before the SEC when Stoller was  
17 questioned.

18 MR. GOULD: How about Count 16, your Honor,  
19 isn't that exactly what we are talking about?

20 "I have no knowledge", he says. "I have no  
21 knowledge" in an absolute sense. Then the follow doesn't  
22 pursue it any more. There is no doubt that a conviction  
23 here would have the fate of Bronston in my judgment in  
24 view of that response.

25 THE COURT. I understand you.

2 MR. SORKIN: Your Honor, again I think nothing  
3 could be clearer than Mr. Stoller's response, "I have no  
4 knowledge".

5 What more can the man say when he is asked, "Do  
6 you know if D'Onofrio ever owned any stock"? The only  
7 thing clear could be, no. He says, "I have no knowledge",  
8 meaning he doesn't know.

9 THE COURT: In any event, I refuse to charge  
10 No. 15 in the context of this case for the two reasons  
11 states.

12 I do not know that the rule of Bronston applies  
13 to 1001. Some day an appellate court may say so. As far  
14 as I know, they have not.

15 More importantly to me, I do not think a little  
16 instruction like this would be fair to the government in  
17 the context of Counts 14 and 16. Exception again to  
18 the defendant Stoller.

19 All right. We will bring the jury in.

20 MR. SORKIN: I am confused as to what your  
21 Honor was troubled about before. Am I to assume I am  
22 summing up this afternoon?

23 THE COURT: Of course. I just have to try and  
24 balance the books with all these criminal cases which  
25 come in like lemmings going to the sea. Unfortunately

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2 the Part I judge does not agree to handle them so I  
3 perforce must.

4 (Jury present.)

5 MR. GOULD: Shall I resume, your Honor?

6 THE COURT: Yes, indeed.

7 MR. GOULD: Ladies and gentlemen, when we suspended  
8 I was talking about the man Bonavia. Of course, My purpose  
9 is to convince you that Bonavia is lying about these  
10 conversations.

11 Now, we have established his motive.

12 Good heavens, he had enough reason to be putty in their  
13 hands. He did very well when he got that latter from  
14 Sorkin. But you must remember we are not talking here about  
15 an honest citizen with an unblemished record. We are  
16 talking about a man who admitted that he had in the past  
17 repeatedly committed perjury to getting something for  
18 himself, always to get something for himself.

19 Now, you know there are people who if you  
20 put them to the torture will not walk in and raise their  
21 hand and swear and swear falsely. But this man admitted that  
22 he had done that in the past.

23 And I suggest to you, ladies and gentlemen,  
24 that when we combine the motive for doing it with the fact  
25 that he had done it in the past, that he came out with

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this extraordinary bonus from the government in the way of  
immunity for his income tax prosecution, you must suspect  
him, you must hesitate to destroy people on the testimony  
of fellows like this.



2           Let's take a little more time with Bonavia  
3 because he is worth it. You see, I must. I must because I  
4 don't think there is anything left of D'Onofrio. This looney,  
5 this Zambian adventurer, I don't pay much attention to  
6 him, but Bonavia looks like a businessman, looks, you know,  
7 outwardly looks decent.

8           I could understand you being impressed by him.  
9 And so first we show you what his motive was for lying and  
10 then we show you he has an admitted history of lying, not just  
11 plain old lying, no. Mary, I was out with the boys playing  
12 poker when he was shackled up in a hotel room, not that kind  
13 of lying. This is lying under oath. This is lying. This  
14 is a crime under the laws of the United States. That is the  
15 kind of lying this fellow admitted that he had done.

16           Let's see what else we know about this man.

17           Always to me the most impressive thing is if a  
18 man lies in the courtroom. In other words, as I said before,  
19 I am prepared to accept the inevitable conclusion that when  
20 the Government sets out to make criminal cases, it has got  
21 to use inferior people. There is no escape from that.

22           But the inferior people when they come in here  
23 must give a demonstration of good faith, of regeneration,  
24 you have got to believe them.

25           To the old pros in our business, the surest

1 gab-2

2 index to their mendacity, to their lying, the surest index  
3 is if they lie in the courtroom right under your noses about  
4 the very things that we are concerned about in the case.

5 You must understand, I don't have the resources  
6 that the Government has to defend this case. I haven't  
7 got Doonans and people like that to go running around doing  
8 my errands for me.

9 I have to depend on the skills of advocacy in  
10 the courtroom. Once in a while I get a break like Pfingst  
11 and I put a guy on the stand cold, never having spoken to  
12 him, and miraculous to relate he comes through, but no  
13 lawyer dares to do that.

14 So we don't have these resources that they have,  
15 you know.

16 So I have to do what I did in the courtroom.

17 Let's see, what did we do with Bonavia? I say he  
18 lied in the courtroom. Let's take Lie Number 1.

19 Cross-examination: "When did you open a bank  
20 account for the first time?

21 "A Yes, '65.

22 "Q Bank Hofmann was your first account?" "It was  
23 an open account, didn't want to conceal it from anybody"

24 And now the question:

25 "A And that was" -- the first account he is talking

1 gab-3

2 about -- "and that was at the suggestion of Mr. Stoller?

3 "A Yes, sir.

4 "Q You are absolutely sure that it w-s Stoller who  
5 suggested that to you?

6 "A Yes, sir.

7 "Q You have so testified here?"

8 Listen to this answer.

9 "A Allen also did. Allen also did."

10 Then we hit him with the letter, his own handwriting  
11 It was at the suggestion of Dr. Walter Wirth. He  
12 never dreamt we would find this letter, but we found it. We  
13 knew that there was a letter about it with a brokerage firm  
14 in New York. We managed to lay our hands on it and we  
15 confronted him with it.

16 So, ladies and gentlemen, there is a bald-faced  
17 lie, not before he was regenerated, but right here in the court-  
18 room.

19 And the viciousness of the lie, the demonstration  
20 that it is a lie calculated to kill, a lie calculated to  
21 hurt, is not just that he said "It was Stoller who suggested  
22 it," Lie Number 1. He volunteers, I didn't ask him. "Allen  
23 also did."

24 Corroborative detail, calculated to give veri-  
25 similitude to an otherwise bald and unconvincing narrative.

1 gab-4 3303  
2 That is what that is. That is a vicious liar.  
3 That is not just a plain liar, that is a guy trying to  
4 stick the stiletto into Allen . That is the beginning.

5 Next lie. When he was before the grand jury  
6 he was asked some questions about his trading account.

7 "You have had an account" -- this is under oath.  
8 This is the grand jury. Nobody is talking about Training  
9 With the Pros, you know.

10 "You have had an account, a trading account at  
11 the Bank Hofmann, have you not?

12 "A Yes.

13 "Q You gave that answer to that question?

14 "A Yes.

15 "Q How did you open that account?"

16 Here is his answer before the grand jury. Now,  
17 this is before he knows he is going to be a witness in this  
18 case.

19 "Q How did you open that account? Who was the person  
20 who recommended your opening that account?"

21 Remember, he said Stoller and Allen also. Here  
22 is his answer:

23 "A This Walter Wirth that I met here in New York,  
24 it is a full disclosure account."

25 "Q Who was the one who recommended you to go to the

1 gab-5

2 Bank Hofmann? What was the name of the man?

3 "A I believe it was Walter Wirth."

4 He knew when he lied in front of you and said it  
5 was Stoller, he knew that it was Walter Wirth. He had  
6 already testified.

7 Now listen how bad this lie is. In November 1967  
8 when he was testifying under oath before the Securities and  
9 Exchange Commission he was asked:

10 "Q Did Stoller or Allen suggest that you open this  
11 account at Bank Hofmann?" I had to repeat the question.

12 "A No, I think I decided to do that when I met with  
13 Wirth gentleman."

14 That is the kind of liar you are dealing with.  
15 It is important only -- who cares whether it was Stoller  
16 or whether it was Allen or whether it was Wirth, who cares?  
17 What difference does it make? It is only important because  
18 you are asked to believe this man on very important things,  
19 things destructive of human life.

20 You are asked to believe him and here is a facile  
21 perjurer who will say anything and did it right in this  
22 courtroom under your nose.

23 Oh, he has got an explanation. He says when I  
24 told this lie I was under the influence of Stoller. Stoller  
25

1 gab-6

2 told me to do this. Stoller told me to do that.

3 Ladies and gentlemen, with all respect, I doubt  
4 if there is one among you with one-tenth the business exper-  
5 ience of this man Bonavia, with one-tenth the exposure to  
6 the crude world that Bonavia has had.

7 I ask you to examine your minds on the basis of  
8 your own experience as human beings and if somebody told you  
9 to go in and commit perjury would you do it? Why would you  
10 do it? You are an experienced businessman, why did you  
11 do it?

End 7B

Oh, he says, D'Onofrio would beat me up if I didn't go in and commit perjury. Then he tells something that I must say will remain in my mind for the rest of my life.

I then went to D'Onofrio and D'Onofrio said, "Oh, no, I wouldn't do a thing like that, that is ridiculous. I wouldn't beat you up."

What does he do, go back to the United States Attorney's office and say, "I did a bad thing, in fear of my life, I committed perjury." This is a businessman. This is a substantial citizen. This is a guy who traded millions of dollars worth of securities. I committed perjury because a fellow said another fellow would beat me up, but the other fellow said he wouldn't, so I wasn't afraid any more, but I let the testimony stand.

Not only that, he went back and committed perjury again and then he committed perjury right in this courtroom under your noses.

I emphasize this point because you have to weigh this man. You have to understand, this is a responsible citizen. This is a fellow whose word we can take. Just like Marilyn Herzfeld and the little fellow, Hyman, and these other people.

Can I believe them? What they are telling me is



1 qb-2

2 coming out of memory, coming out of the heart, coming out  
3 of the mind. This is coming out of filth. This is assassina-  
4 tion for a price and the price is in the Sorkin letter.

5 Let's see what else.

6 Remember, he is being asked about sworn testimony.  
7 "When you testified before the grand jury on November 11, 1969,  
8 you were asked did you deal with Ramon D'Onofrio?

9 "A I met with D'Onofrio the last time I was in New  
10 York. I just happened to meet him.

11 "Q That wasn't true was it?

12 "A Well, that was the 1969 testimony. I answered  
13 as I was instructed to answer it,

14 "Q In other words, it was a lie?

15 "A Yes, sir, it was a lie. Under oath, under oath,  
16 perjury.

17 Again he was asked in the grand jury in the  
18 GEneral Numismatics deal, "You say you paid Mr. Allen a fee.  
19 How much was the fee?"

20 And he said, "I think it was \$6000." A lie?  
21 Yes, he says, that was a lie. He said about Allen, "I had  
22 made an agreement with him because my experience in the  
23 Stock Market was so lousy that I thought I had to have some  
24 expert experience and be willing to pay for it. I respect  
25 his judgment."

1 qb-3  
2 He is talking about Allen. I think he knows  
3 what he is talking about. "He has always been an honest  
4 gentleman with me and good men don't come cheap and I was  
5 willing to pay \$6000."

6 That happens to be a lie. He paid a lot more  
7 than \$6000. He paid it under an agreement that Allen testi-  
8 fied to and we know exactly what it was. But it was a lie.  
9 A proclivity for lying, a propensity for lying, a tendency  
10 to lie under oath when there is something to be gained for  
11 himself.

12 Maybe he was a bad man back there in 1969,  
13 when he lied before the grand jury. I have already pointed  
14 out to you one lie he told right here in this building. There  
15 is no question about it. Wirth, a letter, in his own han -  
16 writing.

17 Now, he says that he never ordered any Training  
18 With the Pros.

19 "Q Do I understand it to be your testimony, sir,  
20 that you never ordered any shares of Training With the Pros  
21 to be bought?

22 "A No, sir, I did not."

23 It is clear, unequivocal. Then there is a piece  
24 of paper here which we called Exhibit Z and I showed him  
25 Exhibit Z and he didn't think we had it or he wouldn't have

1 qb-4

2 told a lie, because Exhibit Z is a writing and it says to  
3 Mr. Herbert at the Bank Hofmann, "Dear Fred: I hereby  
4 authorize you to buy the 5000 shares of Training With the  
5 Pros," and it is signed Barbin, and he says, "It is my  
6 handwriting."

7 So when he lied and when we hit him with the proof  
8 that he was lying, he then did what true liars do. You  
9 know, when a little baby is caught with his hand in the  
10 jam pot in the pantry, he says, "Mommy, I wasn't looking for  
11 jam, I was looking for something else."

12 He said, "I signed that, but when I signed it  
13 the rest of it wasn't on it," to suggest to you that somebody  
14 got the piece of paper with his signature Barbin on it,  
15 becaus- he admits it is his. He admits it.

16 There are lengths to which human beings can go  
17 but I think this fellow went a little too far. Fraud, lies,  
18 perjury here in this courtroom, not somewhere else.

19 I know who was telling him to tell the lies. You  
20 know who was telling him to tell the lies. You know who  
21 is the author of this infamous scheme by now, but it ain't  
22 Stoller.

23 Here it is. Ask for it, look at it. You have  
24 a job, you are supposed to send people to the penitentiary.  
25

qb-5

1  
2 You are supposed to convict human beings on this  
3 filth. This kind of lie? It is my job to show it to you,  
4 your job to consider it, weigh it and ask yourselves, my  
5 goodness, what are they asking me to do here? Why should  
6 you people become the accessories to this offense that has  
7 been committed under your noses here?

8 Lies.

9 More lies. A little fellow named Arden.  
10 Do you remember he said he never ordered any Training With the  
11 Pros from Bonavia? Ridiculous, I was a victim. They did  
12 it, I didn't know about it. The little fellow Arden, poor  
13 Mr.Arden, a man obviously ill, obviously approaching the  
14 end of his life.

15 As I questioned him I couldn't help wondering  
16 whether he would ever survive -- if I asked him what his name  
17 was, he might collapse on the stand. This is no man with no  
18 reason to fear, literally beyond open fear.

19 What can you do with Mr.Arden? He may not live  
20 two weeks. You saw him. The light shines through him.  
21 Mr. Arden says that I know Bonavia, he was in the office.  
22 I remember the conversation when he ordered the Training  
23 With the Pros. Listen to the man. We were there, there  
24 was a conversation. Mr. Bonavia said he had a heavy cold,  
25 he wasn't feeling well, they were discussing Training With the

1 qb-6

2 Pros and now here is the sworn testimony of Mr. Arden.

3 Mr. Arden has never been convicted of a crime.  
4 Mr. Arden is not trying to buy immunity from income tax  
5 prosecution from the guardians of our Government here. Nobody  
6 has got a thing on him.

7 Oh, yes, he is a bad man. He is a friend of  
8 Stoller. When he left the post office and he didn't have any-  
9 thing to do Stoller committed the unspeakable sin of giving  
10 the old man a little job to do.

11 So who would believe him? You believe Bonavia,  
12 the liar against Arden? Listen to what Arden says, this  
13 poor little fellow with nothing to lose, nothing to gain,  
14 whose only sin against mankind is that Stoller gave him a  
15 job and he likes Stoller, he is a friend of his.

16 At the end of the conversation, at the end of  
17 his talk Joe Bonavia asked Mr. Stoller to call Switzerland  
18 to get him \$10,000. Stoller says "not a chance, I can't do  
19 that, they won't buy it on my sayso, if you want it get it  
20 yourself, order it yourself, buy it through your broker.  
21 I like the company, but I am not going to order the stock  
22 for you."

23 Now when we consider what little Mr. Arden  
24 says, and we consider that piece of paper, the Barbin piece  
25

1 qb -7

2 of paper, you ask yourselves as decent, honest human beings  
3 who have to rely on the experience of your own lives who  
4 is telling the truth, Bonavia, the criminal, the practiced  
5 perjurer, who is buying a deal with these policemen here  
6 who are supposed to look after our rights and interest,  
7 he or little Joe Arden, who is on the threshold of meeting  
8 his maker? You ask yourselves who is telling the truth.

9 I think I take Arden and I think you will take  
10 Arden and if you take Arden then Bonavia goes into the  
11 same drain, into the same sewer that D'Onofrio belongs in.

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End 8A

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t8b am

He told other lies, obvious lies. He said that from 1968 until some time in '73 he had no access to any of the documents in the Swiss account. You heard that.

Do you remember that? He was trying to create the impression with you that somehow Stoller and Allen had an account over there and he owned it in some peculiar way, but they handled it. They did what they wanted with it. He really didn't know anything about it. Let's see. On August 23, 1971 he instructed the American National Bank of Rockford to send \$74,507 to the Bank Hofmann to that account in Zurich and to credit it to the secret account, 4318, the account he didn't know anything about.

"Q Did you not instruct them to credit that to the account 4318?

"A No, sir. I instructed them to credit it to Joseph J. Bonavia account in the Bank Hofmann.

"Q Did you find out that it had been credited to the Joseph J. Bonavia account?

"A In 1972 when I picked up my records, if I recall, I believe it had been credited to the 4318 account."

Of course it was credited to the 4318 account because that is what he told him to do.

"Are you telling us now that you instructed



1 jqbr 2

2 them to put them in one account but they put it in another?"  
3 Listen to this liar's answer "I said it possibly could have  
4 been credited to the secret account."

5 He is wriggling because he is afraid I am going to  
6 hit him in the face with the next piece of paper like I did  
7 before. I said it possibly could have been credited to  
8 the secret account. I don't know how the bank handled it.  
9 There were a volume of documents that high. He said he  
10 didn't have anything to do with it. I can't remember every  
11 one of them. Well, sir, I will show you a document marked  
12 Stoller Exhibit X for identification.

13 Do you have a copy of that and did you have  
14 a copy of that in '72 and he says the bank and I says just  
15 answer me because now we got him. Yes, he says, you asked  
16 me if it went into a numbered account and it did. You know  
17 now that the money that went out of your account from the  
18 American National Bank of Rockford went into the secret  
19 account, right? Yes, I know that now, he says. In 1969  
20 -- and here is another one. I am not going to go through  
21 all of them because there are time limitations on what we  
22 can do -- in 1969, \$87,000 was taken out of the secret  
23 account. Let me explain something to you. A man can make a  
24 mistake about whathe puts in, it can go in the wrong account.  
25 But there is no mistaking about what comes out especially

1 jqbr 3

2 if it goes into your own pocket. Well, didn't you know in  
3 July 1969 that \$87,000 was transferred from your secret  
4 account, 4318 to the disclosed account? No, sir,  
5 he says. You learned that in '72, did you not? Yes, sir.

6 Then I showed him Stoller Exhibit Y. I don't  
7 know if there is a copy of this in the files. I have  
8 reason to believe that some documents are missing. This  
9 is like the Barbin note, you know, there was nothing on it  
10 when you signed it. Some documents are missing, he says.  
11 It seems that I remember seeing that now. So you know that on  
12 June 30, 1969, \$87,000 was moved out of the account 4318  
13 into the open or disclosed account, Joseph Bonavia? If  
14 that document is correct it was, yes, but I don't know if the  
15 document is correct. That is a liar talking. First  
16 I don't know anything about it and now I know about it but  
17 maybe the document is false, the Barbin document is false.  
18 Then he realizes that he ought to have known about the  
19 \$87,000. Now he really changes the story. After 1968,  
20 he says, when I opened the numbered account I got no records  
21 from either account. A trapdoor had closed. But, he says,  
22 he reported everything on his income tax returns. He said  
23 that Stoller complained that he was reporting everything --  
24 which he didn't, by the way. He said that there was not  
25 a great deal of activity in the account.

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3316

Let us not belabor it. This man is a liar. He lied in front of you. I am going to give you one other whopper. This man said he didn't know anything about the management of the Swiss account and so he was asked, and this is the trapdoor which had closed, he didn't know anything was going on "Mr. Bonavia, all I want to know is how much money did you get out of your Swiss account on January 9, 1969, tell me, do you know?

"A I got \$200,000, a check for \$200,000."

This is the account he didn't know anything about.

This is the corroboration for D'Onofrio?

Mr. Alenstein reminds me, look at Stoller Exhibit M. He orders 15,000 shares of Sensory Systems, that is Training With the Pros. Do you remember, that was the changed name. He didn't want the stock. He didn't want to have anything to do with it so we show him the letter. He ordered 15,000 shares. They weren't satisfied with Bonavia, and I don't blame them. It looked pretty lousy, especially when you are trying to prop up a D'Onofrio with a Bonavia. It looked pretty bad. So they bring along another little fellow, Mr. Feeney. Oh, Mr. Feeney. There is an instrument for you. Mr. Feeney is being brought here from the penitentiary. He was brought here five weeks ago

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3317

2 from the penitentiary where he is serving a sentence and he  
3 spoke with Sorkin and Doonan at least seven times, a very  
4 complicated subject, you know, who takes more time to get  
5 this through his head. It was all about Training With  
6 the Pros. He was going over his testimony in the case.  
7 Cooperation began in '72, the name of Training With the  
8 Pros came up, he met with Mr. Doonan in September of '73 and  
9 told him about it. Isn't that funny, September '73, just  
10 about the time when D'Onofrio is going to devise the story  
11 and Allen is devising the story and so on. He met with  
12 Doonan. He can't remember the conversations. He is  
13 eligible for parole, he says. He becomes eligible in  
14 Novmeber 1973 and he hasn't yet made an application for  
15 parole. He doesn't want to tell me whether he is going  
16 to get paid off for being a good boy and helping the government  
17 because he has not yet filed an application for parole.

18 He is waiting to do his duty here. Now let us  
19 see who Mr. Feeney is. Mr. Feeney, he is supposed to be the  
20 subject prop. If D'Onofrio collapses, Bonavia collapses,  
21 well, there is always Feeney to fall back on. Feeney was  
22 D'Onofrio's partner in the firm of D'Onofrio, Feeny,  
23 Kirschbaum and so on. He was president of a company  
24 in which D'Onofrio was a stockholder, the stockholder.  
25 D'Onofrio brought him into it. He was an employee of the

1 jqbr

3318

2 dairy that D'Onofrio was mixed up in. Feeney testified about  
3 something that happened in 1969, remarkable. He tells you  
4 about a conversation in 1969 but when I ask him about the  
5 details of the charge to which he pleaded guilty in 1973 he  
6 testifies this way -- and this is the man whose memory goes  
7 back to 1969 and gives you a circumstantial conversation.  
8 Listen to what he says. I am asking him now about a case,  
9 an indictment to which he pleaded guilty and on which he  
10 was sent to the penitentiary.

11 "You read that indictment some time after '73,  
12 didn't you, and you pleaded guilty to it?

13 "A That is correct.

14 "Q And you don't know what the charge is?

15 "A I was charged with stock fraud.

16 "Q What else?

17 "A I can't remember."

18 I would suggest to you next to being hit by a  
19 truck on a street the worst next thing that could happen  
20 to a man in the street is to be indicted and convicted of a  
21 crime. And this fellow can't remember what he was charged  
22 with in 1973.

23 When Feeney met with Mr. Doonan on September 19,  
24 1973 his testimony was that he said 60 or 70,000 shares  
25 of Training With the Pros went public. You and I know

jqbr

3319

that is not right. It was 42,000 shares. It wasn't very well prepared. He told Doonan, and this is a quote, page 1347 of the record. He said "Almost the entire box was bought by the nominees at either G.K. Scott, George Kavokian, or Amswiss, Glen Wu or both". What? No Stoller, no Allen, peoples whose names haven't even come into the case. That is the way he read Training With the Pros when he was questioned back there in '73. There isn't even a suggestion that any of these people had anything to do with it. That is what he thought. They put him straight in time to get him to testify to this.

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2 He never mentioned in the conversation with  
3 Doonan, and he admitted it here in the courtroom, that any  
4 of the shares were going to nominees of Stoller or  
5 nominees of Allen. They did go to nominees of Stoller and  
6 Allen. He didn't know it. He didn't know anything about  
7 it. This was improvised testimony.

8 Now, he said he did not recall any specific  
9 meetings, he didn't remember what he said, but he told  
10 Doonan on September 19th that Allen and Stoller bought blocks  
11 of stock. I don't know what priming went on, what stimu-  
12 lation, what suggestion. We are never going to know what  
13 goes on with these people.

14 They bought blocks of stock probably through  
15 Dominick & Dominick. Then he admitted that was a  
16 guess. You don't guess about things in criminal cases. If  
17 you don't know, you say you don't know. There are certain  
18 differences between what he told Doonan and what he said in  
19 the courtroom. He claimed that the substance of the  
20 story hadn't changed. He said when you told them -- I asked  
21 him this question:

22 "When you told them back in November 1973  
23 what you knew about Mr. Stoller's participation with Training  
24 With the Pros, you told him the same thing that you have told  
25 us here today?



1 gabr

3321

2 "A Yes, sir.

3 "Q Your testimony is not changed?

4 "A No, sir.

5 "Q Indeed, it is exactly the same?

6 "A Yes, sir. The substance of what I am saying is  
7 the same.

8 "There might be some changes of detail?"

9 He says "There is no change in detail".

10 Let's see if there was any change in detail.

11 This man too had testified before the grand  
12 jury under oath, under penalties of perjury. Feeney said in  
13 his grand jury testimony that Stoller told him that Stoller  
14 and Allen were going to receive substantial blocks of stock.  
15 That's what he said at the trial. Excuse me, that is  
16 his testimony at the trial.

17 In the grand jury he said "The stock would be  
18 available to them through D'Onofrio."

19 Well, a little different. Anybody can make  
20 that mistake.

21 In the trial he said "There was a meeting in the  
22 early part of '69 in which Stoller described how he would  
23 move the price of the stock up. In his grand jury  
24 testimony he said something a little different. He said,  
25 and this is a quote -- remember, here he says Stoller

1 gabr

3322

2 said I will move the stock up.

3 Now the grand jury testimony, "Stoller dis-  
4 cussed that he would aid Mr. D'Onofrio in moving the  
5 security to a higher price."

6 That is something a little more significant  
7 because people can ake these mistakes. I don't want  
8 to be captious about it.

9 Feeney said that Stoller told him he was going to  
10 use Swiss accounts, not in the grand jury. In the grand  
11 jury Feeney said "Stoller was going to use contacts that he  
12 hadin Wall Street." There's a big difference, all the  
13 difference in the world.

14 Feeney said at the trial that Stoller and  
15 Allen described how the Bank Hofmann would be used in the  
16 scheme and that they had a relationship with the Bank Hofmann.  
17 That was supposed to be in a meeting in January 1969.

18 Now, he is in the grand jury under oath  
19 there, too. He was asked whether Stoller had told him he had  
20 an account in Switzerland and was a client of Bank Hofmann?  
21 Feeney answered, "Yes, but not at that time".

22 At the trial here Feeney says he had two meet-  
23 ings with Stoller in December 1971, a breakfast meeting  
24 and a dinner meeting at a Swiss Hotel; never mentioned in  
25 the grand jury.

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3323

2 "You remember, sir, this morning you told  
3 us about a meeting that you attended in December 1971, two  
4 meetings, breakfast meeting and dinner meeting with  
5 Stoller at the Eden au Lac, you remember that?

6 "A Yes, sir.

7 "Q Now, sir, did you say anything in your grand  
8 jury testimony about such meeting?

9 "A I don't remember."

10 Then Mr. Sorkin conceded, "We will concede that  
11 he was not asked any questions and didn't testify about  
12 it."

13 He was asked at the trial about a meeting at  
14 Allen's apartment with Allen, Stoller and Bonavia, very  
15 subtle little touch getting Bonavia into that one.

16 In the grand jury he never mentioned it.

17 Here is his testimony at page 137- of the record.

18 "Now, sir, with respect to that meeting at which  
19 Mr. Bonavia was present, that was the only meeting I can  
20 recall your telling about where Bonavia was present, right?

21 "A That's the only one you have been asked about  
22 this morning.

23 "It is the only one you ever attended with  
24 Bonavia and Stoller and Allen?

25 "A Yes, that's the only one.

1 gabr

3324

2 "Q Did you tell anything about that meeting to the  
3 grand jury? "

4 Of course not because at that stage they still  
5 got Allen when he goes to the grand jury. Who needs  
6 Bonavia for this? But now Bonavia is important. Allen  
7 has welched, Allen has reneged, Allen has run away.

8 "Q Did you tell anything about that to the grand  
9 jury?

10 "A I don't recall" says the witness.

11 And then Mr. Sorking concedes there was no  
12 reference to the meeting, there was no reference to Bonavia,  
13 he wasn't asked about it. Of course he wasn't asked about  
14 it. It wasn't important then. It only became important  
15 after the defection of Mr. Allen.

16 Before going to the grand jury he said he tried  
17 to recall the things that had happened. He tried to remember  
18 everything.

19 Feeney has a deal, no question about it, comes  
20 right out in the open. Feeney's agreement with the government  
21 is in return for his cooperation they will inform the  
22 Strike Force of the extent of his cooperation in connection  
23 with another indictment, and it develops miraculous to  
24 relate that after he signed the agreement the other  
25 indictment was dropped.

So, ladies and gentlemen, Mr. Feeney, a confessed perjurer, a convicted felon has a motive to come in here and remember things that didn't happen.

You remember I showed him an affidavit in the Harwyn case. This was under oath. This was an affidavit in an SEC case, sworn to before a Notary Public named Ramon D'Onofrio. This is Feeney's affidavit and D'Onofrio is the notary who signs it and says it is sworn to and true. He says, in October, November and December 1968 he had no business relations with D'Onofrio. In October, November and December '68 he was having business meetings about the ESP stock.

He said in the affidavit that D'Onofrio and Feeney, A.G. -- that was a company that he and D'Onofrio had together-- never acted as a regularly authorized agent in this country for a Swiss bank. He later admitted that there was a specific instance where the bank let us reproduce go on?

This is a perjurer, this is a perjurer with a price. This is a guy that's directed up out of the sewer after Allen's defection when they need another prop because Allen has left them.

Let me tell you about the Feeneys of this world. The Feeneys of this world abound in every

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3326

2 penitentiary, in every jail house. These are the guys that  
3 you slip into the cell to get chummy with the occupant,  
4 to get a statement, to get an admission, to get him to say  
5 something to you. That is Feeney, Feeney brought here on the  
6 penitentiary, convicted felon, D'Onofrio's partner, confessed  
7 perjurer, and he testifies to a conversation, some conversation  
8 with Stoller, no papers, no letters. These are words.  
9 They vanish when you say them.

10 If Stoller had the conversation with Feeney,  
11 the words vanished into air. Nobody can say you didn't have  
12 the conversation any more than the guy can come out of the  
13 cell and say the defendant told me in the cell, he confided  
14 to me that he murdered his wife. That's the kind of  
15 testimony this is.

16 This is planted testimony. This is devised  
17 testimony. Who did it? I don't know. Maybe D'Onofrio  
18 did it. Because he was D'Onofrio's buddy, D'Onofrio's  
19 partner.

20 I hate to think that the government would stoop  
21 to this kind of stuff, although at this stage I expect  
22 anything.

23 Now, let's get back to the structure of the case  
24 because Bonavia I suggest collapses, D'Onofrio we have al-  
25 ready demonstrated, Feeney, this is junk, nobody rides on

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gabr 3327  
Feeney's word. Somewhere do we find ourselves? I am very  
much afraid, ladies and gentlemen, that it stands  
D'Onofrio against the world. That is where it stands.  
If you don't believe D'Onofrio, the case, all of it,  
every part of it, has got to go out the window. If you  
believe D'Onofrio, you have to believe him with all ad-  
mitted lies, with all his perjuries committed under your  
nose.

D'Onofrio stands in this case alone by himself.  
There isn't any corroboration. The corroboration is  
phony. It is bought and paid for testimony.

Let us take a second to examine it again because  
that is the case. D'Onofrio is the case.

Stoller's SEC testimony, which you can  
read, it is in evidence, refutes it.

Pfingst damns him as a liar of the worst kind.  
Pfingst destroys him.

Allen, who I supposed to be at the famous  
Baur au Lac meeing was sitting in New York.

When you consider D'Onofrio's testimony, you  
consdier his claim of regeneration.

This is not a man who says I am a good man,  
believe me, this is a fellow who says I was a liar, I was  
a thief. You remember how that came out, I was a manipu-



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2 lator, I was a this, I was a that, I got a pastrami sand-  
3 wich and so on.

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2 You remember there was one exhibit about  
3 D'Onofrio that I recommend to your attention. There is so  
4 much in this case, so much. There is such a wealth that can  
5 be used by a jury that really wants to understand what  
6 happened here.

7 You don't have to rely on us, look at these  
8 documents. Look at Stoller Exhibit E. That is a letter  
9 that D'Onofrio wrote about an Assistant United States  
10 Attorney, not this one, another fellow, a fellow named Brodsky.

11 He says in that letter, which is in evidence,  
12 "Brodsky and Mr. Tigie," he says, "Of the Southern District" --  
13 that is this office here -- "they both offered me the job  
14 with standard Government pay."

15 That is what he writes. Brodsky sees a --  
16 I am not going to read this whole thing. "They have now  
17 become professed blackmailers with the power to execute.  
18 The mere method of indicting me is a gross insult."

19 He talks about Brodsky's Laurel and Hardy team.  
20 I don't know what he is talking about.

21 Why do I mention this to you? Because you begin  
22 to see what transformed this guy from just another felon,  
23 just another criminal on the run, into a professional  
24 stoolpigeon, a man who is living literally dependent on  
25 his giving evidence.

1 gab-2

2 And now let me quote to you from what is some of  
3 the purest gems in the collected works of Mr. Ramon D'Onofrio.  
4 This is his own letter. I am not making any of this up.  
5 This isn't rhetoric. This is his own kind of poetry here.

6 He says here, "They take away a man's dignity  
7 for false reasons, my right to work and care for my respons-  
8 ibilities by taking my passport for false reasons. After  
9 all the work I have done for the Department of Justice  
10 and the FBI, and what do you create, an animal." His words.  
11 Well, I guess he is right, he is an animal.

12 "With gunslingers like the Department of Justice,  
13 the Southern District employees, instead of being arrested  
14 I am likely to have a cardiac" -- you better look at this  
15 stuff. I don't have the time to read this. This is him,  
16 the animal, describing himself magnificently. I don't know  
17 how you can do better than that. He is an animal all right.

18 I have said enough about the 31,000 bucks.  
19 I urge you to look at that. You see, D'Onofrio is an habitual  
20 professional liar. That is his business for which he is  
21 being well paid.

22 I asked him a few questions about it. I asked  
23 him about this yarn in Zambia. He agreed that parts of that  
24 story never happened except in his mind.

25 Then I played around with him. I said, "Is this

1 gab-3

2 a habit of yours, to improvise this kind of thing?"

3 He said only when he needs leverage. These are  
4 his words.

5 "Is this the only time you ever did it?

6 "A I needed leverage and bargaining power.

7 "Q In other words, whenever you need leverage and  
8 bargaining power, you are prepared to tell lies?

9 "A In the past.

10 "Q But there was a period in your life when if you  
11 needed leverage you were prepared to tell lies?

12 "A Many periods in my life when I needed leverage  
13 I told lies.

14 "Q This is not the only one?

15 "A No, sir, I lied many other times before Government  
16 agencies, Government officials.

17 "Q And under oath?

18 "A And under oath, yes, sir, and under oath to  
19 protect myself, sir, to protect myself."

20 That is what he did here, to protect himself,  
21 to keep out of the penitentiary, to make a little money on  
22 the side, he lied here.

23 He lied again in an affidavit in 1967, sworn paper.  
24 He said he had no assets whatever, false, perjurious,  
25 lies. They were lies, sworn to again.

1 gab-4

2 "Q So you filed these two false and per-  
3 jurious affidavits?

4 "A That's correct.

5 "Q You knew them to be false and perjurious?"  
6 Listen to this man's answer.

7 "A I wanted to cover up my crime.

8 "Q So we have it then that you were a thief?

9 "A Yes, sir.

10 "Q And you were a liar?

11 "A Yes.

12 "Q And you were a perjurer?

13 "A Yes, sir."

14 And then I got him with a couple of other false-  
15 hoods, a couple of other lies, a couple of other perjuries;  
16 Liar, liar, thief, thief, perjurer, perjurer. And around  
17 this your Government, the Government of the United States,  
18 manufacturers this case, around this man. They hire this  
19 man, they pay this man, they phony up the vouchers to pay  
20 him, and around this this case is constructed. Bonavia with  
21 the phony letter, which I unhesitatingly condemn as a false-  
22 hood. With the deals around these people this case is  
23 constructed.

24 I think the tipoff on Mr. D'Onofrio is really  
25 contained in the testimony of Mr. Hiller. Now, Mr. Hiller

1 gab-5

2 is another fellow. He has nothing to hide, nothing to lose,  
3 nobody owes him anything. He ain't afraid of anybody.

4 He just comes in here and he says, "I ran into D'Onofrio  
5 and I asked him what brought him to the courthouse," and  
6 he says -- this is magnificent really, this is for Zola,  
7 this is for the great realistic writers of our time. I  
8 couldn't duplicate this dialogue. He says he is here to  
9 deliver bodies, people without -- let me start again.

10 I left something go out.

11 He said he has been working pretty steadily. He  
12 is here to deliver bodies, people without faces, he is being  
13 paid somewheres -- I don't recall whether it was two to  
14 \$400 a week, and he is traveling back and forth at Government  
15 expense on Friday to Las Vegas and back again on Monday.

16 That's true, he was.

17 And he said he had a deal, he hoped to get two  
18 years in jail. He had a deal to serve it down in Florida,  
19 the Eglin Air Force base where Louis Wolfson had been.

20 Then he added another one.

21 "Oh, there was more of that conversation. He  
22 asked me how many cases I could testify in and I used my own  
23 vernacular. In other words, they want to know how many bodies  
24 can I deliver."

25 This is D'Onofrio. Excuse me. I read it wrong.

1 I read it wrong.

2 D'Onofrio says about the conversation with  
3 Hiller. "He asked me how many cases I could testify in and  
4 I used my own vernacular. In other words, how many bodies  
5 can I deliver."  
6

7 So the conversation took place. You can't  
8 improve on this. I am here to deliver bodies. I am here  
9 to deliver bodies for money, I am here to deliver bodies to  
10 stay out of jail, I am here to deliver bodies.

11 And my God he has delivered the bodies of these  
12 two men into this courtroom with a mess of lies, with the  
13 assistance of the Government in a case as foul as any I  
14 have ever seen in my life. That is what he has done.

15 Ladies and gentlemen, you are being asked to  
16 be agents in this process.

17 Now, I want to abbreviate this summation. I want  
18 to leave out some of the things that I was going to say, because  
19 I think you are all weary, you must be sick at heart of my  
20 repetition of the word lies, perjury and falsehood, the  
21 filth with which we have been dealing.

22 There was one incident in this courtroom which  
23 I suggest to you is unprecedented and which must strike  
24 at your minds in a manner calculated to make you suspicious  
25 of everything that your Government does.



1 gab-7

2 As if the deals weren't enough, as if the vouchers  
3 weren't enough, as if the phony letter to Bonavia wasn't  
4 enough, you remember the little woman, Allen's wife, that  
5 came in here. At that time she was called because there  
6 was still a count in which Stoller was supposed to have  
7 threatened her, made a call, threatening call. It is out of  
8 the case, but the woman was here and you saw her.

9 She told about what Stoller had said to her  
10 on the telephone.

11 Then on cross-examination -- I am sure she was  
12 right. I am sure she is a perfectly honest, decent woman  
13 telling it the way she remembered it happened.

14 On cross-examination I asked her, "Didn't you  
15 think he was drunk?" And she said, "Yes."

16 Now, ladies and gentlemen, there is all the differ-  
17 ence in the world between a man making a threat when he is  
18 sober and a man making a threat when he is drunk. If I am  
19 standing in a barroom and a fellow next to me has had 12  
20 shots and he says I am going to kill you, you son-of-a-bitch,  
21 that is not a threat. Then I say to the bartender, why  
22 don't you throw that bum out, he is chasing the customers  
23 away. If the man is stone sober and we have been partners  
24 and there are differences between us and he says to me, I  
25 am going to kill you, that is a threat.

1 gab-8 3335  
2 So I asked this little woman, "Didn't you  
3 know he was drunk?"

4 She says, "Of course I knew he was drunk.

5 "Q Why the heck didn't you tell the grand jury you  
6 knew he was drunk?

7 A "Oh, I spoke to Mr. Sorkin before we went into  
8 the grand jury. I remarked to him that Stoller drinks..

9 "Q And you thought that he was drunk on the day  
10 he made the call, that is clear, isn't it?

11 "A Yes."

12 And Mr. Sorkin said to you, "Just answer the  
13 questions," and he never asked any questions about it.

14 Now, if I am a conscientious prosecutor and  
15 the question is, did the man do something like that or  
16 didn't he do something like that, I suggest to you I don't  
17 want to conceal that he is drunk. What is the Government  
18 out for, a batting average? But he said to you, "Just answer  
19 the questions."

20 Then I went on with it. And she said, "Yes, I  
21 told him I thought the man was drunk," and, in effect, he  
22 said to me, "Forget about it. Don't confuse us with the facts.  
23 We don't want to hear about that kind of stuff." And he  
24 never asked her about it.

25 Then something remarkable happened, something which

1  
2 in my judgment puts the final mark of beast on the prosecu-  
3 tors in this case. The kid, Glen Allen, the young man,  
4 because he got telephone calls too and he was brought in  
5 to the grand jury too. He told the same story. But before  
6 you went into the grand jury room did you tell Mr. Sorkin  
7 that Stoller was drunk, and why shouldn't he be drunk?

8 This was a tragedy occurring in his life. His  
9 closest associate, his best friend, was going to come in  
10 and perjure himself at the behest of the Government.

End 9B

1                   Some guys would have jumped off a roof.    Poor  
2  
3                   Stoller, he didn't commit suicide, he got drunk and made  
4                   a few telephone calls. Listen to what the kid said, but before  
5                   you went in to the grand jury room did you tell Mr. Sorkin  
6                   that Stoller was drunk?

7                   "A    Yes, sir.

8                   "Q    What did you say?

9                   "A    Mr. Sorkin, I should tell him he was very drunk,  
10                  shouldn't I?    I stated the fact that Phil seemed to be  
11                  extremely intoxicated." "You conveyed that to Mr. Sorkin  
12                  before you went in to the grand jury room the fact that  
13                  Stoller seemed to be extremely intoxicated, correct?

14                  "A    Yes, sir.

15                  "Q    What did Mr. Sorkin say about that?

16                  "A    After I stated that fact, nothing.

17                  "Q    Did he not say to you don't mention that, don't  
18                  volunteer?

19                  "A    He said to me, he told me not to volunteer in-  
20                  formation, just answer the questions he asked.

21                  "Q    And you were not asked any questions about whether  
22                  Mr. Stoller was drunk or not?

23                  "A    No, sir, I was not.

24                  "Q    You were told not to volunteer, correct?    Just  
25                  answer the question.

1 qb-2

2 "A That is what I was told."

3 But wait, that isn't bad enough, these seekers  
4 after truth who let the witnesses go in and conceal the  
5 very unimportant fact that the voice on the other end of the  
6 telephone is the voice of a drunken man, sometime they got  
7 hold of a little Glen Allen, and there was this little peculiar  
8 conversation about narcotics. There is no argument about that, r  
9 argument about it. I asked the man -- and I confess to you,  
10 this was pure instinct. I knew they were messing around with  
11 this kid. I knew they wanted to sustain those counts.  
12 I knew they were afraid of what they had done and I asked  
13 him have you had a conversation with Sorkin in the last few  
14 days -- and listen to this, this is our Government we are  
15 talking about.

16 Yes, he did. He spoke to him briefly. In the  
17 conversation that you had with him was there any mention  
18 made of narcotics or marijuana or narcotic drugs?

19 A Yes, he told me that he heard a rumor that the  
20 office that he represents was going to plant marijuana on  
21 me or because I testified they would get me off some marijuana  
22 conviction, something along those lines." That is what he  
23 told him.

24 Do you know what he was really telling him, forget  
25 about the drunkenness, something might happen to you, kid.

qb-3

1  
2 Y ou might get hit with a truck with a sign on it that says  
3 marijuana or narcotics. That is what he was telling him,  
4 no mistake about it. Why bring the subject up with this  
5 kid? Why terrify this boy? Because the boy had a danger-  
6 ous piece of information. The fact that the representative  
7 of the Government of the United States prior to his going  
8 in to the grand jury room said to him in effect, just answer  
9 the question, don't tell them about the drunkenness. Don't  
10 tell them the one thing that makes a difference between being  
11 guilty of a threat and not guilty of a threat. Your  
12 Government, my Government. Foul, disgraceful, sickening.

13 Now, ladies and gentlemen, I come close to the  
14 end of this. You know, something happened in this case  
15 that doesn't often happen in criminal cases. That is that  
16 the Government's chief witness, the man around whom the whole  
17 blueprint was withdrawn, Mr. Allen or the Number 2 witness,  
18 I don't know. It is hard to weigh between D'Onofrio and  
19 Allen. He appears as a witness for the defense. Do you  
20 think I like that? Do you think I like Mr. Allen? Do you  
21 think I espouse Mr. Allen? Do you think I endorse Mr.  
22 Allen? But only through the mouth of Mr. Allen could this  
23 jury know what really happened in this case, and Allen told  
24 it to you and Allen wasn't shaking.

25 And remember, Allen has been their boy in their



1 qb-4

2 cage for a long, long time and if there were any perjuries  
3 out of Mr. Allen you would have heard them.

4 And Allen is no sweetheart. Nobody wants Mr. Allen  
5 for a son-in-law or a father-in-law or any other kind of  
6 relationship.

7 Allen is a bum. But Allen came in and Allen told  
8 the truth. Allen appears to have had some kind of revulsion  
9 against what was being done. Allen got a little sick the  
10 way I am sick about this case. Here is what Mr. Allen tells  
11 you happened and there isn't any question about it.

12 Some time in the fall of 1968, no June, no Baur  
13 au Lac, that is improvised baloney -- some time in the fall  
14 of 1968, Mr. D'Onofrio found out about a company called  
15 Training With the Pros and it was no different from 1000  
16 or 10,000 other little companies that had an idea that if they  
17 got public money they might go somewhere. And D'Onofrio began  
18 to negotiate with a fellow named Moss to help him take this  
19 company public.

20 And there was a lawyer named Pfingst that  
21 D'Onofrio brought in. And when they were about to take the  
22 public Mr. D'Onofrio began to get nervous because where was  
23 the stock going to go? They have to have customers for the  
24 stock. So he comes to a couple of fellows he knows who  
25 have good reputations at that time and one of them has a good



1 qb-5

2 reputation down to this day, experts, pros, and he says  
3 will you take a look at this company, do you think it can go  
4 anywhere?

5 And they take a look at the company and they say,  
6 you have a hell of an idea, we would like to get a little  
7 for ourselves.

8 And they get a little for themselves and  
9 that is no crime. There is nothing wrong with the fact  
10 that they got something for themselves. There is nothing  
11 wrong with the fact that they got something for themselves.  
12 There is nothing wrong with the fact that they used nominees  
13 because they didn't want it to show that each one of them  
14 was getting anything.

15 So what. That is done ten million times in the  
16 street and you heard it from the witnesses. There is nothing  
17 unusual. You heard it from the Swiss witnesses. You heard  
18 it from Rashes. Listen to Rashes, the Securities and Exchange  
19 Commission's Mr. Rashes, in the course of your examination  
20 of Mr. Stoller there is some reference to the use of nominees.  
21 Do you recall that?

22 "A Yes, sir.

23 "Q You have conducted a number of investigations  
24 into these so-called rapid increase of new issues, have you  
25 not?

1 qb-6

2 "A Yes, sir.

3 "Q Have you not found that it is characteristic  
4 of trading securities generally that people use nominee  
5 names?

6 "A It happens, it is not -- I won't say it is the  
7 most common occurrence, it happens. It is not unusual.  
8 I couldn't classify it as unusual.

9 "Q You could not?

10 "A I could not."

11 So what? That is no crime. That is standard  
12 operating procedure in Wall Street where nobody wants the  
13 left hand to know what the right hand is doing. So what  
14 happens? They get the nominees. Now Stoller and Allen,  
15 according to the testimony in this case had a deal with the  
16 Swiss Bank. By the way, they had Swiss bank accounts and  
17 so did everybody else that has come around here, and a lot of  
18 other people at that time, and that is no crime.

19 So they have this deal with the Swiss bank, par-  
20 ticularly Stoller and Allen.

21 If they come across a good-looking situation they  
22 tip the bank off, the bank buys stock for customers and if the  
23 customers make a profit the bank pays them a percentage of  
24 the profits, and that is no crime and there is nothing wrong  
25 with that and nobody can say that is a crime.

1 qb-7

2 Then they buy the stock and then a little confusion  
3 develops with respect to the transfer of the stock and they  
4 make a big thing out of that.

5 They brought people from Switzerland to testify  
6 to you about the terrible thing that was done, how they  
7 tried to conceal it, and then we took the Swiss on cross-  
8 exajination. An honest guy, the Swiss. They came over  
9 here and they knew what the heck they were coming for.

10 Listen to this. The Swiss bank required proof  
11 of ownership, a big fuss. A question to the Swiss, this is  
12 Henchoz of Deetjen, "And it was not an unusual event, was it,  
13 for you to require a customer to present proof of ownership?

14 "A No, it happened very often. Sure."

15 Then I went into how many different ways it  
16 could be done.

17 "Q And was it unusual for you to question their  
18 certificates that they presented?

19 "A No, sir, it was the usual thing. We are always  
20 extremely careful."

21 Of course they are extremely careful. Here  
22 were certificates on a brand new stock, it came out of  
23 the United States, over to a Swiss bank and sent back by the  
24 Swiss bank for transfer. So they wanted proof of ownership.  
25 Bit deal. Do you want to know why the Government makes such

1 qb-8

2 a fuss? Because on one of the documents which was used  
3 to substantiate the proof of ownership there was a reference  
4 to Frank and this was a technique by D'Onofrio to construct  
5 around it.

6 This is Zambia again. This was a trick to  
7 construct around it, something that was incriminating. You  
8 know, I can prove to you that a miracle happened next to the  
9 wall, and I will show you the wall. This is a wall. This  
10 happens every day. This is nothing.

11 Now, ladies and gentlemen, I am going to close.  
12 I have probably touched on half of what is wrong with this  
13 case in this submission. But there are limits to what people  
14 can do, limits to what I can say and limits to what you can  
15 listen to. I am going to close with this instruction to  
16 you. This is not a case. This is a conspiracy. This is  
17 a frameup. It doesn't happen often, and thank God that it  
18 doesn't happen often, but this is a frameup. There is no ques-  
19 tion about the culpability of D'Onofrio in it. Bonavia, he  
20 is ready to say anything for that letter he got. That letter  
21 is worth a million dollars to him. He would send his mother  
22 to jail for that letter. Feeney is contemptible. D'Onofrio  
23 also.

24 End 10A

25

1 jqbr 1

3345

t 10a am 2

3 I don't like to emphasize the part that the  
4 government people made in this case. I was really hoping  
5 that at some point in this case, technically after Allen's  
6 a-cusation of impropriety against Mr. Sorkin, we would be  
7 given some demonstration that they weren't true. Honestly,  
8 I did. They were very good at bring in people who could  
9 tell you what time Mr. Sorkin left the building on January  
10 15. But I didn't hear any refutations of what Allen said.  
11 I didn't see anything to substantiate the phony payments.  
12 I think they know where the airline companies are and where  
13 they keep their records.

14 I didn't see any hotel bills. I didn't see  
15 any attempt for them to refute that fake letter that was  
16 given to Bonavia, just a couple of guys to tell you what  
17 time Sorkin left the office and what time Allen left the  
18 office. Maybe Mr. Allen was wrong about whether he was  
19 grilled on the 15th or the 16th. On the 16th is when  
20 I think it happened. On the 16th I think he was shown that  
21 plot, the scenario D'Onofrio wrote and he was told in  
22 plain language, look, pal, do you want to spend the rest  
23 of your life in jail or not because if you don't read the  
24 scenario and you come through the same way and if you  
25 don't, you go. That is what he told us, you heard him.  
Does it really matter whether it happened on the 15th or the

jqbr

3346

16th? I don't think so. His Honor is going to charge you on the law and in the course of the charge his Honor will explain to you what the burdens of the government are because they have the burden, not we. We don't have to come in and disprove the case. They have to prove the case.

His Honor is also going to charge you on something very important to this case, the burden of proof. He is going to charge you on something equally important which is a presumption of innocence. He is going to charge you on all of those things.

I suggest to you that there has occurred in this case -- and one other thing, what we call a reasonable doubt. I leave that for his Honor. His Honor is an experienced, skilled professional and he will do it better than anybody else can do it. He will charge you on that.

I want to leave you with this thought: The government has the burden of proof. That burden of proof is to prove these defendants guilty beyond a reasonable doubt. I suggest to you that in this case only only hasn't the government sustained the burden of proof, in this case the defense has torn them to pieces. I care little what Mr. Sorkin says this afternoon. There is nothing Mr. Sorkin can say to you this afternoon which will validate those perjurious vouchers. There is nothing that Mr. Sorkin



1 jqbr

3347

2 can say to you this afternoon which will invest with honesty  
3 and validity that letter that he gave to Bonavia. There  
4 is nothing that Mr. Sorkin can say to you this afternoon  
5 which will compensate for the repeated perjuries of the  
6 government witnesses in this case.

7 There is one thing that I fear.

8 As you know, there are many counts that have been  
9 taken away from you. The Court has dismissed them. There  
10 remain a couple of appendage counts at the end of this  
11 indictment in which Stoller is charged with having testified  
12 falsely before the Securities & Exchange Commission back in  
13 1969. Two counts, 14 and 15. I am sure that his  
14 Honor will read Count 14 to you before your deliberations.  
15 I am very nervous about those counts because I think that  
16 the government is down to the point where that is about all  
17 that they can rely on. I am suggesting to you that those  
18 counts, like everything else in this case, depend on the  
19 testimony of D'Onofrio. In Count 14 it is charged that  
20 Stoller lied when he said he didn't own any shares of  
21 Training With the Pros on the date of his testimony and that  
22 he had not owned any shares of Training With the Pros from  
23 the moment of his transaction in which he sold his 5,000  
24 shares to Bank Hofmann.

25 There is no question he sold the 5,000 shares to



1 jqbr

3348

2 him. That is admitted. He gave this testimony on  
3 June 20, 1969. I suggest to you that there is not a  
4 single bit of evidence in this case that Stoller owned any  
5 stock on June 20th and the only question is whether he did  
6 own any stock after the transaction. D'Onofrio has  
7 testified that Stoller instructed Herbert to deposit the  
8 5,000 shares into his account at the Bank Hofmann. D'Ono-  
9 frio's is the only evidence in this case even remotely  
10 suggesting the fact that after the event Stoller owned any  
11 stock. The testimony of D'Onofrio, and I ask you to be  
12 particularly attentive to his, on this point, and I don't  
13 think he can be believed for anything, but it is refuted by  
14 documents. It is refuted by Stoller's testimony and by Allen's  
15 testimony but it is also refuted by documents. The docu-  
16 ments -- and you better look at Government's Exhibits 11 and  
17 12. The documents reveal that D'Onofrio actually sold  
18 4900 shares of Training With the Pros stock to Bonavia and got  
19 his money. They reflect D'Onofrio's sale. The docu-  
20 ments reflect that Allen sold his stock and the government  
21 did not over any documents to the effect that Stoller still  
22 had the stock except -- these are the Allen ones, 33 and  
23 34. You have got Allen's testimony that the stock was  
24 all sold out and no proof, no proof, that Stoller still  
25 owned the stock.

1 jqbr

3349

2 Jerry Allen confirms what the documents said.  
3 He is talking to Hofmann or Herbert rather at the Bank  
4 Hofmann. He said or he told Freddy, that is Herbert, that  
5 the stock was coming at \$7 and if you or Phil can get anybody  
6 else to sell it you could sell it. Then he testified that  
7 they each got the 5,000 shares and they sold them to the  
8 Bank Hofmann. The importance of that is that Allen confirms  
9 and the documents confirm that the stock was sold out.

10 Now as to Count 16, that is the remaining false  
11 statement count. It is charged there that Stoller lied to the  
12 Securities and Exchange Commission when he said he had no  
13 knowledge as to whether D'Onofrio owned any stock, Training  
14 With the Pros stock, on June 20, 1969. They didn't ask him  
15 whether D'Onofrio owned it back in '68 or whether he owned  
16 it when it came out on February 4th. They asked him on  
17 June 20th, and here is what he says, here is the question:

18 "Mr. Stoller, do you know if Allen owns any  
19 stock of Training?

20 "A I have no knowledge.

21 "Q Do you know if D'Onofrio owns or owned at  
22 any time?

23 "A I have no knowledge. I am using the word  
24 knowledge in its absolute sense." That is a smart  
25 answer. You know, he is being smart there.

1 jqbr

3350

2 "When you say absolute sense would you clarify  
3 that?

4 "A Well, if you put a match under my fingers  
5 I have knowledge that you burnt me because I saw you burn  
6 me and I felt it.

7 "Q In other words, you have no direct knowledge  
8 outside of possible suppositions?

9 "A My favorite course in high school was  
10 semantics. I have no knowledge."

11 The evidence is that Stoller didn't know that  
12 D'Onofrio owned any TWP stock. D'Onofrio talked about a  
13 meeting in Switzerland in which he said he handed -- if  
14 you take D'Onofrio's own testimony -- in which he handed  
15 Herbert the certificates of his nominees. They are in  
16 evidence, those transfers. Here they are. Here are the  
17 certificates. We got the bills. We got the whole thing.  
18 In other words, assuming that Stoller saw these things that  
19 doesn't give him any knowledge that D'Onofrio owned it. That  
20 is the play on words on which they would like to get a  
21 conviction for a false statement in this case. I suggest  
22 to you that D'Onofrio never did show Stoller the records  
23 of any transaction in which he, D'Onofrio, owned stock.  
24 That there is not testimony that he ever told Stoller he  
25 owned any and anyway can't be believed but Jerry Allen did

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2 give us some evidence on it. Jerry Allen told you that  
3 he did not know whether D'Onofrio purchased any stock. He  
4 answered that. If Allen didn't know, Stoller didn't know.  
5 Allen said this "Mr. Allen, you testified yesterday that the  
6 15,000 shares were delivered and sold to the Bank Hofmann"  
7 and his answer "No, I said 10,000. 5,000 for myself. I didn't  
8 say 15,000. you said that.

9 "Q 5,000 for yourself, 5,000 for Stoller?

10 "A Yes.

11 "Q What about 5,000 for D'Onofrio?

12 "A I never testified, I don't believe, that he  
13 delivered or sold any stock.

14 "Q Did he?

15 "A I don't know."

16 The same question that is put to Stoller in  
17 the SEC. "I don't know. I know what I sold and I believe  
18 I know what Phil sold, 10,000 shares.

19 "Q Yes, you didn't say 15,000.

20 "You sold that to the bank, negotiated the transaction,  
21 is that correct?

22 "A Yes, sir."

23 That is all we have on it. Ladies and gentle-  
24 men, this case is going to be yours before very long. Before  
25 very long you will hear something from Mr. Sorkin, this

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afternoon, his Honor will charge you and then the case will go you and I am going to take one minute more and then I am going to relieve you of the sound of my voice in this case.

You have seen me in this courtroom now for five weeks fighting, fighting, fighting. It must have occurred to you that in the fulness of my years there are other places that I could be, more profitable. Why am I here? I am here, ladies and gentlemen, because the minute I saw this case I detected the aroma of rotten, of opulence, of decay, of corruption, because I regard this case as a symptom with what is wrong with many of us in this country. I regard this as a contrived case. I don't know what their motives are. Somebody said something about how Sorkin had it in for Frank. I don't know. I hope that isn't true.

But whatever the motivations are in this case, the case reeks. The case is a mess of perjury. The witnesses don't hold up and to make human beings go through the valley of the shadow of death, to make them live in the shadow of extinction the way these men have lived all these months is infamous. This is a sick case brought by a sick government, using sick, distorted, diseased, depraved people. When his Honor explains to you what the applicable law is I know that I can feel

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confident that as the voice of a community, as the people who know that this could happen to you, it could happen to me, they could pick us out and rig a thing like this against any one of us, I think you would throw it out for all of us.

Thank you.

THE COURT: Mrs. DeBartola and ladies and gentlemen, we will suspend now. In light of the time I would ask that we resume at 2:05, it now being ten minutes of one.

(The jury left the courtroom.)

(Luncheon recess.)

AFTERNOON SESSION

2:15 p.m.

(In open court; jury present.)

THE COURT: All right, Mr. Sorkin.

MR. SORKIN: Thank you, your Honor.

Your Honor, Mrs. DeBartola, ladies and gentlemen  
of the jury:

This case is the United States of America v.  
Philip Stoller and Martin Frank. They are accused of  
conspiracy, they are accused of stock fraud and Mr. Stoller  
is accused in two counts, two allegations of making false  
statements to the Securities and Exchange Commission on  
June 20, 1969.

If any of you believe at the outset that  
Mr. Morvillo, Mr. Brodsky, Mr. Les Green of the Securities  
and Exchange Commission, who was sitting in her Majesty's  
jail, Pentonville Jail and made up that agreement with  
Brodsky, the D'Onofrio agreement, which Mr. Gould didn't  
show to you on his summation, didn't even talk to you about  
it and especially me --if any of you think that at any  
time we manufactured and created the evidence that you have  
heard over five weeks from nearly 30 witnesses, over 120  
documents in evidence. if you believe that we manufactured



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2 any part of that, then you acquit these defendants, you let  
3 them go.

4 I submit to you, ladies and gentlemen, that  
5 Mr. Gould's summation and to a lesser extent Mr. Feldshuh's  
6 summation has been a smokescreen, has been an attempt to  
7 blur your vision and to keep you from concentrating on the  
8 facts of this case, on the evidence in this case.

9 He did what he thought was necessary to get his  
10 client off and Mr. Feldshuh's client off. He made the case  
11 of United States of America v. Philip Stoller and Martin  
12 Frank into the case of Milton Gould v. Ira Sorkin and he  
13 did it in two hours and he did it in the light of five weeks  
14 of testimony and documents which have come into evidence  
15 before you.

16 Why didn't Mr. Gould ask Mr. Bonavia and  
17 Mr. D'Onofrio on cross examination when they were up there  
18 if Mr. Stoller was drunk when Mr. Stoller threatened  
19 Mr. D'Onofrio and threatened Mr. Bonavia on several  
20 occasions? Why didn't Mr. Gould remind you that the  
21 marshal's office downstairs which prepares the vouchers  
22 didn't require proof of airline ticket --

23 MR.GOULD: I object to that, your Honor.  
24 There is no such proof and there is no necessity for  
25 that. There was an opportunity for the government to

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2 adduce their proof.

3 MR. SORKIN: I would like to continue with my  
4 summations.

5 MR. GOULD: I know he would; not this way, your  
6 Honor. They had that opportunity and they neglected it.

7 THE COURT: Yes, if you make an objection,  
8 please let the Judge rule.

9 MR. GOULD: That is an objection.

10 THE COURT: Tell me when you are finished and  
11 I will rule. All right.

12 My recollection is there is no proof of the  
13 marshal's requirements in this regard, but again I will leave  
14 this to the jury who can decide on their recollection.  
15 Let us go to somebody else.

16 MR.SORKIN: Why didn't Mr. Gould remind you  
17 of Dick Rand of the United States Embassy in Berne,  
18 Mel Snyder, Mr. DeCharriere from Emanuel Deetjen, Mr.  
19 William Brief from Long Island, Mr. Stoller's friend?  
20 Why didn't he remind you of approximately 30 witnesses who  
21 testified in this case and dealt solely only, only with  
22 Mr. Feeney, Mr. D'Onofrio and Mr. Bonavia? Why didn't  
23 he remind you about Walter Paruch, why didn't he remind you  
24 about the testimony of Elinor Wein? Why didn't he remind you  
25 about the testimony, full testimony of Nathan Hyman? Why  
didn't he do that?

2 The only defense witness who testified in this  
3 case who said there was any impropriety on the part of the  
4 Government was Jerome Allen.

5 They called Jerome Allen.

6 You remember Jerome Allen, the man who testified  
7 that he was threatened in a Swiss jail by Dick Rand, if you  
8 don't come back to the United States, we are going to put  
9 pressure on the Swiss to keep y9u in solitary confinement for  
10 two years.

11 You remember Mr. Allen testifying along those  
12 lines. You heard Mr. Rand, Who do you believe, Jerome  
13 Allen or Dick Rand?

14 You remember Mr. Allen testifying that on the  
15 date that he came back to the United States, the only date  
16 he was specific on, and he stuck to it, January 15, 1974 --  
17 and you won't forget the date that you come back to the  
18 United States from a Swiss jail, January 15, 1974. That was  
19 the date he stuck to. Remember Mr. Allen saying over and over  
20 that I sat in the office from 7:00 until 12:00 A.M. and  
21 1:00 A.M. and structured his testimony?

22 Do you remember him testifying along those lines  
23 and he didn't vary from it once? That is not a day he  
24 would likely forget, would he, ladies and gentlemen?

25 You remember Slavinsky and Gray, the two postal

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2 inspectors, saying they brought him to my office at a quarter  
3 of 6:00 on January 17, 1974, and they accompanied him out  
4 of the building? Do you remember that?

5 And they observed him go to get a cab. Do you  
6 remember Sergeant Antonielli being called to produce the  
7 sign-out sheets for January 17, 1974, and Sergeant Antonielli  
8 producing those sheets for you and Assistant U. S. Attorney Ira  
9 Lee Sorkin signed out at 7:15 that night?

10 Then Mr. Gould in his summation gets up before you  
11 and he says to you, I suggest to you that it was the 16th.  
12 Remember he sloughed over that towards the end of his  
13 summation, smudged January 15 when his own witness, stuck  
14 by January 15 on two days of cross-examination.

15 Do you remember that? Do you remember Mr. Gould  
16 saying January 15 to you? On January 16, the sign-out  
17 sheet which he asked to be produced from Agent Antonielli  
18 showed Sorkin, Assistant U. S. Attorney Sorkin, signing out  
19 at 7:55 P.M.

20 Why didn't he remind you of that i- his summation,  
21 that the sign-out sheet for January 16 was 7:55 P.M.?

22 Do you recall me asking Mr. Allen on cross-  
23 examination what other dates, what other times, what other  
24 places, where, when, did I allegedly structure testimony?

25 And Mr. Allen couldn't pick a specific date. For

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2 six months he couldn't pick a specific date except January 15.  
3 And that was the date that we had to meet and we met January  
4 15.

5 I suggest to you that the reason he didn't give any  
6 other date was for fear that we would pin him down on January  
7 15. We would pin him down on the other dates just like  
8 we did on January 15.

9 We suggest to you, ladies and gentlemen, that  
10 Jerome Allen's testimony is worthless. We are going to  
11 deal with Mr. Allen's testimony further on in this case as  
12 we move through the evidence, because that is my function,  
13 ladies and gentlemen, as the attorney for the Government, to  
14 present the evidence to you, not to deal in personalities,  
15 not to deal in accusations, not to deal in threats and  
16 insinuations and innuendos. It is my function to present  
17 the evidence to you that you heard for five weeks in this  
18 courtroom.

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20 End 1B  
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The evidence is clear, ladies and gentlemen.  
The evidence is crystal clear. And the evidence in this case which is entitled United States of America vs. Philip Stoller and Martin Frank is clear that this evidence proves overwhelmingly and beyond a reasonable doubt that these defendants are guilty as charged and we are going to go through that right now and show you what the evidence shows.

Mr. Gould and Mr. Feldshuh want you to forget the evidence. They want me to spend my time up here in my summation in the time allocated to me defending myself, Mr. Brodsky, Mr. Morvillo, the United States Attorney's office for the Southern District of New York, Mr. Curran and everybody else who passed through their office.

But I have a job to do and my job is to present the evidence to you.

Now, ladies and gentlemen, let's go through the evidence in this case. As we go through the evidence I want you to think to yourselves why the defense never mentioned to you in their summations much of the evidence that I am going to present to you. Let's go through it. Prior to June 1968, Ramon D'Onofrio was approached by Elmer Moss. Mr. Moss asked him if he would underwrite a company called M & H Studios. Mr. Moss met Mr. D'Onofrio or they

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2 had conversations at Hancock Securities. You remember  
3 Hancock Securities? Hancock Securities is the place that Mr.  
4 Bonavia testified that he met Philip Stoller and Jerome  
5 Allen in 1967 and 1968. D'Onofrio initially said no,  
6 but later on in 1968 he says he will help him with the under-  
7 writing.

8 And he agrees and he wants to be a partner.  
9 And remember D'Onofrio explaining the advantages of a  
10 company going public? Do you remember Miss Herzfeld testi-  
11 fied that she spoke to D'Onofrio and that she was introduced  
12 to D'Onofrio by Mr. Moss?

13 D'Onofrio then speaks to Pfingst. You remember  
14 Joseph Pfingst. We will deal with Mr. Pfingst later. Mr.  
15 Pfingst, that suave, debonair, straightshooting bankruptcy  
16 fraud felon. Do you remember Joseph Pfingst? The man who  
17 had just gotten out of jail and says he doesn't know whether  
18 he likes or dislikes D'Onofrio. Do you remember Joseph  
19 Pfingst? But who blurts out on cross-examination that it  
20 was a one-witness case and that one witness who sent him to  
21 jail was Ray D'Onofrio, even though he was convicted in  
22 the United States District Court for the Eastern District  
23 of New York. Somebody mentioned here that Joseph Pfingst  
24 doesn't have an axe to grind.

25 I suggest to you if Joseph Pfingst had an axe



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2 in his hand he would grind it on Ray D'Onofrio's head and  
3 it has been suggested to you that Joseph Pfingst has no motive  
4 to take the stand and testify in a contradictory manner to  
5 what Mr. D'Onofrio testified to you.

6 But we will deal with Mr. Pfingst later. Let's  
7 go to the Baur au Lac, ladies and gentlemen, the Baur au Lac  
8 meeting. Remember the bit to-do about whether Allen was  
9 there in June, whether D'Onofrio was there in June, whether  
10 Pfingst was there in June. Why didn't Mr. Gould show you  
11 D'Onofrio's statement which he put into evidence which  
12 D'Onofrio prepared in November 1973? Why didn't he show you  
13 this?

14 On Page 5, why didn't he read to you this, "Now  
15 I have to take you back in time again, somewhere in the May-  
16 June, July area."

17 Mr. D'Onofrio in here mentions July. If Mr.  
18 D'Onofrio was wrong between June and July that we submit is  
19 not critical to his testimony because in November of '73,  
20 ladies and gentlemen, he said it could have been July.

21 On the next page he says, Page 6, "After we got  
22 back from one of our European trips, one of our summer trips,  
23 either June or July, we visited Martin Frank."

24 Why didn't they remind you of this statement  
25 which they were waving in front of you when Mr. D'Onofrio

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2 was on the witness stand? Let's go to the Baur au Lac and  
3 discuss the conversations at the Baur au Lac and see how  
4 everything began at the Baur au Lac and continued on up through  
5 April and May of 1969, and see how the testimony has been  
6 corroborated right down the line by each and every Government  
7 witness.

8 They have a conversation on the plane and  
9 Pfingst says did you talk to the boys about the deal, Mr.  
10 Stoller and Mr. Allen. D'Onofrio says no, I didn't talk to  
11 them. Pfingst says, why not, and D'Onofrio candidly admits  
12 because I am a con man. It would be one con man conning  
13 another.

14 They wouldn't believe me. They decided Pfingst  
15 would be the one that would present it at the Baur au Lac.  
16 You remember the Baur au Lac, ladies and gentlemen, the  
17 beautiful redwood overlooking the lake that Mr. Gould alluded  
18 to when he was cross-examining Mr. D'Onofrio, and Mr. D'Onofrio  
19 said, "Keep going, it sounds so beautiful." Do you remember  
20 the Baur au Lac? All of you must remember that.

21 Then Mr. Gould spends some time with Mr. D'Onofrio  
22 on cross-examination, whether Mr. D'Onofrio said that  
23 Stoller was enthusiastic in the beginning or not enthusiastic  
24 in the beginning. What difference does it make, because  
25 D'Onofrio's testimony was that in the beginning he wasn't

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1 enthusiastic except when Mr. Stoller started to see those  
2 million dollar signs in his head and figured that this deal  
3 could be worth \$1 million, that is when he became enthus-  
4 iastic about the deal. Then Mr. Allen pipes in at the Baur  
5 au Lac and Mr. Allen says M & H Studios, not fancy enough  
6 of a name. Let's change the name. When is the name changed?  
7 The name is changed, ladies and gentlemen, in the fall of  
8 1968.  
9

10 You heard Miss Herzfeld testify. I ask you this,  
11 if Mr. D'Onofrio was the one who suggested the name change  
12 or wanted the name changed, why didn't he do it back in  
13 the spring or the late winter of 1968?

14 If that was Mr. D'Onofrio's idea, why didn't he  
15 do it then? I suggest to you he didn't do it then because  
16 it was Mr. Allen who put it in his mind after the Baur au  
17 Lac meeting.

18 You remember Miss Herzfeld testifying that  
19 D'Onofrio suggested that they change the name. Let's go back  
20 to the Baur au Lac. Do you remember Mr. Stoller says at  
21 the Baur au Lac, you got to have a thin float?

22 And remember Elinor Wein coming and telling you  
23 the effect of a thin float, what it does to the market?  
24 You get wide spreads between the bid and asked. Even Mr.  
25 Hyman came in here and said with 200 shares purchased for

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2 one of his customers that stock moved up 10 points.

3 The market makers, the over-the-counter brokers  
4 were gyrating that stock.

5 I think he even used that word "gyrations."  
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1                    Ask yourselves now why Mr. Stoller wanted  
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3 a thin float. Mr. Stoller knew, I suggest to you, that  
4 a thin float makes that market gyrate up and down, wide  
5 spread. You can control the market with a thin float.  
6 And I suggest to you that that is why Mr. Stoller wanted a  
7 thin float and that is why he suggested it to Mr. D'Onofrio  
8 from at the Baur au Lac.

9                    Mr. D'Onofrio is asked did he control Moss  
10 and Mr. D'Onofrio said yes, he controls Moss.

11                   Then Joseph Pfingst says let use an indication  
12 letter like the previous deal so we can blow it off to  
13 Bonavia and Weissinger. Well, we all know, ladies and  
14 gentlemen, that D'Onofrio had clients at Bank Hofmann.  
15 I think he testified he had two clients at Bank Hofmann. Do  
16 you remember that? Big deal. Because according to  
17 Mr. Bonavia Mr. Stoller and Mr. Allen had 50 to 60 clients  
18 at Bank Hofmann and two of those clients were Barbin and  
19 Pompeii, Bonavia and Weissinger.

20                   Then something very interesting happens at  
21 the Baur au Lac. D'Onofrio says we have got to rescue  
22 Mr. Bonavia and Mr. Weissinger. How are we going to  
23 rescue them? Let us get the Elinors. Who suggested the  
24 Elinors? Mr. Stoller or Mr. Allen? Mr. D'Onofrio didn't  
25 really know the Elinors that well. He had an account with

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2 Elinor Wein. He was told to go to Elinor Wein by Mr.  
3 Stoller or Mr. Allen to open up a commodity account there.  
4 Who knew the Elinors? The Nathan Hymans and the Walter  
5 Paruches and the Elinor Weins? These people, these  
6 brokers, these setups, these patsies, these people who  
7 believe anything that Mr. Stoller and Mr. Allen told them,  
8 you heard them testify that they believed that Mr. Stoler  
9 and Mr. Allen were very knowledgeable people in the  
10 stock market. They knew their stocks. And each one  
11 of them right down the line said that they didn't research  
12 the company. They knew nothing about it before  
13 Mr. Stoller or Mr. Allen mentioned the stock to them.

14 We submit to you, ladies and gentlemen, Mr.  
15 Stoller and Mr. Allen knew that the Weins and the  
16 Paruches and the Hymans were setups, three of those brokers  
17 were setups and all that had to be done with them is suggest  
18 the stock to them and they go right in and they buy the stock  
19 and that is what they testified to when they came in here,  
20 not even knowing D'Onofrio.

21 What is the rescue, ladies and gentlemen?  
22 The rescue is when you rescue Bonavia and Weissinger  
23 you tout the stock to the Elinors because that has the  
24 effect of raising the price of the stock as they buy the  
25 stock for their customers. You heard Mr. Hyman say he put

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2 an order in for 200 shares.

3 MR. GOULD: I object to this. There is no  
4 proof in this case as to the effect on the stock market of  
5 those few transactions. There is nothing at all in this  
6 record on that subject.

7 THE COURT: My recollection is there were  
8 put in evidence pink sheets.

9 MR. GOULD: Just as to prices, not as to the im-  
10 pact of any of these transactions, your Honor. We have  
11 mentioned this before. It is improper for counsel to  
12 attribute to those few hundred shares the impact he is  
13 imputing. There was no expert witness here.

14 THE COURT: You are certainly right, there  
15 was no expert to give us expert testimony on the subject.

16 MR. GOULD Certainly not. He is charging now  
17 that it was these transactions which had the effect on the  
18 market and there is no such proof in the case.

19 THE COURT: Lest by chance he is referring to  
20 some quotations in the pink sheets, I would be inclined to  
21 agree with you.

22 MR. GOULD: Thank you, your Honor.

23 THE COURT: Is that what you are referring to?

24 MR. SORKIN: I am referring to Mr. Hyman's  
25 testimony where he said he put an order in for 200 shares



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2 and the price jumped 10 points.

3 MR. GOULD: There is no nexus between  
4 Mr. Hyman's testimony and the transactions he is talking  
5 about.

6 THE COURT: I will say to you that that is a  
7 fair argument and we will leave it to the jury.

8 Go ahead.

9 MR. SORKIN: That is how Mr. Bonavia and Mr.  
10 Weissinger can be rescued, ladies and gentlemen.

11 MR. GOULD: I object to that. That is a  
12 reiteration of what I objected to. There isn't a  
13 scintilla of proof that any of the Bonavia or Weissinger  
14 stock was sold to anybody.

15 MR. SORKIN: I would like the opportunity to  
16 finish the thought before Mr. Gould comes in and objects.

17 MR. GOULD: That is not discourtesy. When  
18 counsel in summing up makes an attribution of proof to  
19 something that I say is not in the record it is my duty to  
20 object.

21 THE COURT: May I suggest, gentlemen, that this  
22 can be resolved very simply. We will disregard your  
23 last statement, Mr. Sorkin. Please, start again and if I  
24 may say so let us go to something else. If you want to go to  
25 Weissinger and Bonavia --

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2 MR. SORKIN: I want to go back to the  
3 Baur au Lac. We are at Baur au Lac. It is suggested  
4 that how are you going to rescue Weissinger and Bonavia  
5 and it is suggested they are going to rescue them by touting  
6 the stock to the Elinors, getting them to buy the stock.  
7 Who are the Elinors? The Elinors are Hyman, Wein and Paruch.

8 MR. GOULD I object to this. This is a  
9 reiteration of what counsel did five minutes ago. There  
10 is no such proof in this case that one share of stock was  
11 sold to these people out of the Bonavia and Weissinger  
12 accounts. It is outrageous for counsel to suggest that  
13 on this record.

14 THE COURT: Just a moment. I don't think  
15 I understood counsel to be saying that. If he did I  
16 would agree with you.

17 I don't recall any such proof either. He  
18 didn't say they came out of the accounts. I understand  
19 it Mr. Sorkin is arguing what they were discussing at the  
20 Baur au Lac in June of '68, is that correct?

21 MR. SORKIN: That is exactly right, yes,  
22 sir.

23 THE COURT: Let us stick to that and go ahead.

24 MR. SORKIN: Let me point out something to  
25 you, ladies and gentlemen. Is it more than coincidence

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2 and more than fate that Bank Hofmann sells 500 shares  
3 for Mr. Bonavia on April 15, 1969?

4 Do you remember those 500 shares, Government's  
5 Exhibit 66-A through 66-C.

6 You can ask for them. April 15th, ladies  
7 and gentlemen.

8 On that particular day Mr. Bonavia was sold  
9 out by Bank Hofmann for 500 shares.  
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2 Why do I point that out to you? Because the  
3 testimony in this case is that on approximately April 15,  
4 1969 Elinor Wein and Nathan Hyman spoke to Messrs. Allen  
5 and Stoller. Do you recall their testimony?

6 And right after, right after Elinor Wein  
7 and Philip Stoller spoke to Messrs. -- Elinor Wein and  
8 Nathan Hyman spoke to Mr. Allen and Mr. Stoller, they  
9 turned around and put their customers --

10 MR. GOULD: If your Honor please, I object to  
11 that because the plain imputation of that is that the  
12 500 shares in Bonavia's account went into Elinor Wein and  
13 there is no proof that is susceptible of proof and there  
14 isn't proof. That is what he is saying to this jury.

15 MR. SORKIN: I am not suggesting that,  
16 your Honor.

17 MR. GOULD: My goodness.

18 THE COURT: Gentlemen, the point is, first of  
19 all, Mr. Gould, my recollection of the evidence is as  
20 you say, there is no direct proof that these were  
21 Bonavia's shares from Bonavia's account. But again I am  
22 not sure that is what counsel is arguing.

23 I think what the argument is is quite something  
24 different. I think you can avoid this, Mr. Sorkin, if you  
25 make it a little clearer what you are really arguing.

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2 MR. SORKIN: Ladies and gentlemen, look, look at  
3 Mr. Bonavia's confirmations for that date, to the left,  
4 April 15, 1969. In New York we have sold for you --  
5 I am handing to you one exhibit. If you want the other  
6 two, you are welcome to see it in the jury room, ladies  
7 and gentlemen. April 15, 1969 is when Bank Hofmann sold Mr.  
8 Bonavia 500 shares, sold from his account 500 shares.

9 Let us go back, ladies and gentlemen, to the  
10 Bau au Lac meeting.

11 Mr. Stoller says he is not worried about  
12 Mr. Bonavia and not worried about Mr. Weissinger. Using  
13 language that we needn't repeat here, if there is going to  
14 be any rescuing, we can sell the stock to them at \$50 a  
15 share, move the stock up to 60 or 70.

16 And look what Wein and Paruch and Hyman, ladies  
17 and gentlemen, bought the stock for for themselves? When  
18 that market went up they were buying stock in the market  
19 at 60, 62, 64 and Mrs. Gizella Frank, ladies and  
20 gentlemen, Mr. Hyman's customer, bought that stock for \$70  
21 a share.

22 Now we get to another why in this case.

23 Why didn't the defense on cross examination  
24 of Mr. D'Onofrio ask about the entire conversation at the  
25 Baur au Lac? Why were the exceptions of Mr. Gould asking

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whether Stoller was enthusiastic in the beginning or  
enthusiastic in the end did they not go into that conver-  
sation? Why didn't they?

Why didn't the defense -- why didn't the  
defense ask Mr. D'Onofrio about the dates that he put  
in this statement which he made back in November 1973?  
Do you remember Mr. Gould waiving the statement?

When they returned from the Baur au Lac,  
ladies and gentlemen, they meet Martin Frank. That is  
what Mr. D'Onofrio said in November of 1973, they meet Martin  
Frank. They tell him about the deal.

They tell him they are going to blow it off  
to Weissinger and Bonavia and they are going to handle it  
the same way they handled the last one.

What does Mr. Frank say? Mr. Frank says "If  
it is a good stock and a hot number, make sure I get some  
for my account because I didn't get any the last time."

Another why in this case. Why didn't  
Mr. Feldshuh ask Mr. D'Onofrio about that conversation on  
cross examination, the September meeting?

And the great to do, ladies and gentlemen, about  
the indication letter, Government's Exhibit No. 4,  
D'Onofrio says it was prepared by Pfingst, prepared by  
Pfingst with D'Onofrio's help at Bank Hofmann, typed

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2 up in Switzerland and sent in mid October of 1968.

3 Herzfeld says she saw the letter, the letter came in, she  
4 showed it to Moss, D'Onofrio told Moss that the letter was  
5 being sent.

6 D'Onofrio told Moss that he knew that the letter  
7 was being sent. Of course he knew the letter was being  
8 sent. He and Pfingst prepared it and Bank Hofmann had  
9 mailed it.

10 When you look at that indication letter, ladies  
11 and gentlemen, D'Onofrio identified the signature on that  
12 indication letter as Fred Herbert's, A. Herbert. You look  
13 at the signature on all these confirmations and you compare  
14 the signature on those documents with the signature on the  
15 indication letter.

16 Let us go to the November meeting in Mr. Frank's  
17 office.

18 As we go through this November meeting,  
19 ladies and gentlemen, ask yourselves why didn't the  
20 defense on the cross examination of Mr. D'Onofrio go  
21 into this particular meeting? They spent hours, literally  
22 hours on the Vatican, on the Amitalia Fund. Why didn't they ask  
23 Mr. D'Onofrio about this all important meeting?

24 Mr. Stoller gives Mr. Frank according to  
25 Mr. D'Onofrio's testimony a copy of the indication letter.



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2 Now, remember this indication letter, ladies and gentlemen.  
3 This indication letter was mailed on October 17, 1968.  
4 Remember the testimony here of Bruce Rich right in the  
5 beginning of this trial? Remember the testimony and  
6 remember Government's Exhibit No. 1-A for identification.  
7 The offering circular notification. The date of that, the date  
8 of that filing is October 25, 1968, eight days after this  
9 indication letter is sent from Switzerland.

10 It is no wonder that when they go to Mr. Frank's  
11 office in November of 1968 Mr. Frank says "You can't do it  
12 this way. You can't do it like the last deal".

13 How does Bank Hofmann know on October 17, 1968  
14 that a notification or an offering circular is going  
15 to be filed on October 25, 1968? The only people who were  
16 supposed to know about that, the company officers and  
17 directors and the company's lawyer.

18 How does a bank 6,000 miles away know that you  
19 are going to be filing on October 25th?

20 Remember what Mr. Frank's testimony was -- I am  
21 sorry, Mr. D'Onofrio's testimony about what Mr. Frank said?  
22 Mr. Frank said "Who sent this letter? Who prepared this  
23 letter?"

24 Mr. D'Onofrio says "Pfingst. And Mr. Frank says,  
25 according to Mr. D'Onofrio, that country humpkin. He doesn't  
know anything about SEC law.

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2                   Remember, ladies and gentlemen, the only  
3                   people privy to this off-ring were Mr. D'Onofrio, Mr. Moss,  
4                   Miss Herzfeld and that is all.

5                   MR. GOULD: I object to that, your Honor. That  
6                   is not a statement of the testimony at all in this case.  
7                   Pfingst was privy.

8                   MR. SORKIN: I just said Pfingst, your Honor.  
9                   If I can just complete --

10                  THE COURT: May I suggest that the jury will  
11                  determine who is right on this one because if counsel  
12                  makes a mistake, it is the jury's recollection which controls  
13                  no matter what.

14                  Let's go on.

15                  MR. SORKIN: Mr. Frank saw the troubles,  
16                  ladies and gentlemen. We submit to you at that meeting in  
17                  November he saw trouble coming.

18                  So what does he suggest to them? "Indicate for  
19                  the stock, take 20, 25,000 shares," says Mr. Stoller.

20                  Mr. Frank says, "No, 20 or 25 is no good. Take  
21                  15. I am going to show you how to do this deal without getting  
22                  caught," says Mr. Frank.

23                  "Pick up the stock in the after market if you  
24                  want more than 15,000 shares and use nominees," nominees,  
25                  ladies and gentlemen, "who you can trust."

1 gab-2

2 Why didn't the defense cross-examine Mr.  
3 D'Onofrio about this all-important meeting?

4 Let's look now at Mr. D'Onofrio's statement in  
5 November of 1973. Remember much of the cross-examination  
6 of Mr. D'Onofrio was, you made things up here on the stand  
7 today that you didn't say in November of 1973, created a whole  
8 new story between November of '73 and the time you took  
9 the stand here today. That is what they were trying to convey  
10 to you.

11 Let's see what Mr. D'Onofrio said in November of  
12 '73 on Page 6.

13 "After we got back from one of our European  
14 trips, one of our summer trips, either June or July, we visited  
15 Marty Frank. At this meeting Mr. Pfingst was not present  
16 because we wanted to ask Marty's advise once again having  
17 used Pfingst as the attorney. We were now going to him for the  
18 advice. Phil Stoller, Jerry Allen and myself visited with  
19 Marty Frank and told him we were going to do this company,  
20 Training With the Pros overseas, and we forgot to tell him  
21 we had already sent or were going to send or going to have  
22 a letter sent from Bank Hofmann. He told us that the best  
23 way to do it, being it was a self-underwriting, would be, (a)  
24 to create nominee names for both Phil, Jerry and myself.  
25 In setting it up in this fashion right after it was issued

1 gab-3

2 or the stock became effective, we could wait until the  
3 securities were issued from the transfer agent and then have  
4 them sell, our nominees sell it to ourselves, Jerry and  
5 Phil, at a predetermined price giving each of the nominees  
6 a small profit so that there could be no complaints on the  
7 nominees' part.

8 In other words, I would get Mr.A to take a thous-  
9 and shares at 7, and I would even supply the money if neces-  
10 sary and Mr. A. would then on the day of the opening sell  
11 me that stock even though he didn't get the certificates  
12 yet at \$8 or \$9 and he would make himself a thousand dollars  
13 for doing nothing..

14 That is what Mr. D'Onofrio said in here in  
15 November of 1973.

16 Why didn't the defense read this part to you when  
17 they were cross-examining him?

18 They also agree at this meeting that they are  
19 going to give the nominees two dollars higher. Mr.Stoller  
20 said according to Mr. D'Onofrio, using words that need not be  
21 repeated here, no, he is only going to give him a dollar more.

22 And what does William Brief get, ladies and  
23 gentlemen? He gets \$1.25, \$8,250 for his \$7000 purchase.

24 And something else about Mr.Brief, ladies and  
25 gentlemen. On February 28, 1969, when he says he sold the

1 gab-4  
2 stock to Mr. Stoller at 8.25, he says he called his broker  
3 and his broker quoted the stock to him in the pink sheets  
4 at 11 or 12.

5 Well, either his broker was lying to him or his  
6 broker didn't look in the pink sheets because on that part-  
7 icular day, ladies and gentlemen, the pink sheets on February  
8 28, the lowest bid price quoted in the pink sheets on February  
9 28, 1969 -- February 28, 1969, ladies and gentlemen, was  
10 \$29 a share. Mr. Brief, Mr. Stoller's friend and neighbor,  
11 sold it to Mr. Stoller at \$8.25 when it was quoted in the  
12 pink sheets at \$29 a share.

13 Let's get back to the meeting in Mr. Frank's  
14 office. Mr. Frank says, "Now that I have shown you how to  
15 do the deal, what am I going to get for it?"

16 Mr. Stoller says, "What do you want?"

17 Mr. Frank says, "One thousand shares and \$15,000."

18 MR. FELDSHUH: Objection.

19 THE COURT: Sir?

20 MR. FELDSHUH: I object to that comment. The  
21 means paragraph was stricken and your Honor directed, if I  
22 recall your Honor's direction, that there be no mention of  
23 that item in this case.

24 THE COURT: Certainly I agree with you about the  
25 means paragraph. You are talking now about Paragraph R?

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2 MR. FELDSHUH: Yes, sir.

3 THE COURT: In Count 1, Paragraph 5, yes. I

4 assume, Mr. Sorkin, you will concede that that is the fact.

5 MR. SORKIN: I did, your Honor. I am just

6 repeating the conversation that is in evidence, your Honor.

7 THE COURT: Perhaps I missed that.

8 Would you repeat again what you are really

9 saying?

10 MR. SORKIN: I am saying in this conversation

11 Mr. Frank, according to Mr. D'Onofrio's testimony, says

12 he wants 1000 shares in his account at Bank Hofmann and

13 \$15,000. That is all I said, your Honor.

End 3B

1 qb-1

2 THE COURT: Correct. But the Government does  
3 concede that it is not proved that he ever received the \$15,000.

4 MR. SORKIN: We have conceded that all along,  
5 there is no proof on that.

6 THE COURT: All right, go ahead.

7 MR. SORKIN: Ask yourselves now, ladies and gentle-  
8 men, in light of what has just happened if Mr. D'Onofrio  
9 was going to lie why didn't he just come out and say that  
10 he paid Mr. Frank \$15,000? Why didn't he just say if Mr.  
11 Gould and Mr. Feldshuh say that Mr. D'Onofrio has laid  
12 all along, why couldn't he simply have said oh, yes, I paid  
13 him \$15,000.

14 MR. FELDSHUH: Must we have a repetition of  
15 this speculation upon material that your Honor and the Govern-  
16 ment has consented be stricken?

17 THE COURT: I don't quite regard it that way.  
18 It is an argument and I have done my best to make abundantly  
19 clear to the jury that the Government concedes that Mr.  
20 Frank has not been proved to have received \$15,000. He is  
21 making quite a different argument which the jury may or  
22 may not accept.

23 MR. FELDSHUH: I submit this is tantamount to  
24 doing by indirection a violation of your Honor's instruction.  
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1 qb-2

2 THE COURT: I said, sir, I don't agree. Let's  
3 not repeat our arguments.

4 MR. FELDSHUH: Very well, your Honor.

5 MR. SORKIN: Remember Mr. D'Onofrio testifying,  
6 ladies and gentlemen, that in late December of December, I  
7 shouldn't say late, I recall it as December of 1972 or January  
8 of 1973 he was in Switzerland. He was a fugitive in  
9 Switzerland and he overheard a conversation at the Bank  
10 Hofmann between Mr. Stoller, Mr. Frank and Mr. Herbert. Remember  
11 D'Onofrio testifying to that? Mr. Feldshuh in his summation  
12 gets up here and says another fantasy of D'Onofrio. It  
13 didn't occur. Ask yourselves, ladies and gentlemen, why  
14 didn't --

15 MR. FELDSHUH: If your Honor please, the evidence  
16 is that this conversation did not take place at Bank  
17 Hofmann. That is a misstatement, your Honor.

18 THE COURT: Mr. Feldshuh, you may be right but  
19 I am not the trier of the facts, sir. You have made your  
20 arguments and he is making his. Counsel run the risk of  
21 making arguments that are not supported by the evidence. The  
22 jury will determine who is right. Let's not interrupt again  
23 for that. I have made that point. This is I think the third  
24 time in the last few minutes.

25 MR. FELDSHUH: Except he states as a fact that

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2 this conversation took place at Bank Hofmann when the record  
3 is plain and I am sure he knows that it didn't take place  
4 there.

5 THE COURT: Mr. Feldshuh, I don't say you are  
6 wrong. Again, I don't decide these matters. The jury  
7 does. That is all I am saying. Let's go on, sir,

8 MR. SORKIN: Page 311 of the transcript,  
9 ladies and gentlemen. Back to 310. "Did there come a time  
10 when you overheard a conversation between Mr. Stoller, Mr.  
11 Frank and Mr. Herbert?

12 "A Yes.

13 "Q When was that?

14 "A When I was a fugitive from justice.

15 "Q And when was that?

16 "A Around December of '72 or January of '73 or  
17 November or December of 1972."

18 That is what Mr. D'Onofrio testified to you.  
19 Now remember, ladies and gentlemen, remember this: Why  
20 didn't Mr. Feldshuh in his summation to you yesterday remind  
21 you that Mr. Frank's passport was stamped December 13, 1972,  
22 Zurich, Switzerland? Either someone was using Mr.  
23 Frank's passport or Mr. Frank was there.

24 Let's go on, ladies and gentlemen. After the  
25 meeting in Mr. Frank's office a trip is made to Zurich,

1 Switzerland by Mr. D'Onofrio and Mr. Stoller. And another  
2 gentlemen by the name of Irving Cott. You remember Mr.  
3 Cott. Mr. Cott is the same Mr. Cott, we suggest to you, who  
4 Mr. Stoller said would get Mr. Bonavia if Mr. Bonavia walked  
5 into the SEC in 1967 and mentioned Mr. Allen and Mr. Stoller.  
6

7 Do you remember Mr. Bonavia's testimony? Because  
8 it would lead to L.J. Forget in Canada. Well, Mr. D'Onofrio  
9 and Mr. Stoller meet with Mr. Ballmer and Mr. Herbert and  
10 they agree, based on what Mr. Frank has told them that they  
11 are going to use nominees to get the stock into their secret  
12 accounts rather than have Bank Hoffman indicate for it. They  
13 tell Mr. Ballmer that Mr. Frank said to get receipts to throw  
14 the SEC off base. Get receipts and checks drawn on  
15 New York banks showing about a \$2 profit. Let's look at those  
16 receipts, ladies and gentlemen, which Mr. D'Onofrio testified  
17 he received in Switzerland. He observed Mr. Stoller receive  
18 and he observed Mr. Stoller receive Mr. Allen's.

19 I want you to look at these documents, Exhibits  
20 11 and remember, just as Mr. Gould reminded you, ladies and  
21 gentlemen, I remind you, you can take every one of these exhibit  
22 in to the jury room when you deliberate. Look at No. 11.  
23 Look at No. 33, which is Mr. Allen's, which Mr. Allen identi-  
24 fied. Look at No. 35, which is Mr. Allen's. Number 35,  
25 ladies and gentlemen, and No. 12, Mr. D'Onofrio's. Ask

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2 y ourselves, are these different from one another in any  
3 material way or are these the receipts very similar to  
4 one another, the same transaction, Mr. D'Onofrio getting  
5 his receipts and Mr. Stoller getting his receipts and Mr.  
6 Stoller getting the receipts from Mr. Allen.

7 Look at those exhibits. Also take a look, ladies and  
8 gentlemen, while you are at it, at Mr. D'Onofrio's receipt  
9 and Mr. Allen's receipt. Compare them.

10 We submit to you, ladies and gentlemen, that Mr.  
11 Allen used his receipts here when he testified to throw you  
12 off base just like the SEC was supposed to be thrown off  
13 base when they got into the investigation of this stock.

14 Something else very interesting, too, ladies and  
15 gentlemen, "Konto Pro divers on these receipts. Take a  
16 look at that. Konto Pro Divers. Both documents show  
17 account divers. One account, remember, ladies and gentlemen,  
18 an airplane ride in approximately December of 1971, where Mr.  
19 Stoller and Mr. Feeney are on the airplane? Remember they  
20 have a conversation? Remember Mr. Stoller says to Mr. Feeney  
21 that he and D'Onofrio and Jerry Allen had set up an omnibus  
22 account for the purpose of the cross to Bonavia and Weissinger.

23 MR. GOULD: If your Honor please, I object  
24 to this.

25 There is no evidence in this case as to the

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meaning of Konto Pro Diverse.

I offered to stipulate with counsel what it meant, that offer was rejected and there is no basis for saying that Konto Pro Diverse is an omnibus account such as Feeny referred to.

THE COURT: Again, I would have to say that that is my recollection, Mr. Sorkin.

MR. SORKIN: I don't intend to suggest that.

MR. GOULD: That is precisely what was suggested.

MR. SORKIN: I am not suggesting that at all.

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THE COURT: Would you please rephrase what you said so we can clearly understand what you are arguing.

MR. SORKIN: What I am arguing, ladies and gentlemen, and your Honor, is that there was to be one account, one omnibus account before the cross to Bonavia and Weissinger, before the cross to Barbin and Pompeii. That is what Mr. Stoller said to Mr. Feeney on the airplane, an omnibus account for D'Onofrio, Stoller and for Allen.

What does Mr. D'Onofrio say when he comes in here? Mr. D'Onofrio says the stock went into two accounts, Gypsy, account Erika and account Shirley, three accounts. Gypsy was Mr. D'Onofrio's account, Erika was Mr. Allen's account and Shirley was Mr. Stoller's account.

Remember something else too, ladies and gentlemen. Mr. Allen said that his stock went in to Erika. Ask yourselves if it went in to Erika why doesn't his receipt reflect Erika? Mr. Allen's receipt has Erika nowhere on it. But he testified that his stock went in to Erika. Let me remind you of something else too. Mr. D'Onofrio said that Mr. Stoller would buy in the after market and that Mr. Stoller would give the instructions. Speaking of buying in the after market, ladies and gentlemen, which is the market after the stock goes public, after the effective date, isn't it more than just coincidence

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that the very date, that Mr. Stoller and Mr. Allen and Mr. D'Onofrio have on their receipts, which we are going to get to in a little while, the receipts they allegedly got from Bank Hofmann to show the sale of the 5,000 shares of Bank Hofmann, the very date of February 25, 1969 which is on those receipts, is it more than coincidence, ladies and gentlemen, that that is the very date that Bank Hofmann over here begins to buy in the after market. February 25, 1969.

We are going to come to those receipts in a little while because I want to show you something very significant about them. Something else took, ladies and gentlemen, while we are at it. Is it more than coincidence that on April 15th when Elinor Wein and Nathan Hyman say that they spoke to Messrs. Stoller and Allen, on that very date, April 15th is the day that Bank Hofmann begins to sell.

MR. GOULD: Your Honor, this is the precise thing that I objected to before. Counsel has already been informed that there is no such evidentiary nexus. This is not the time to retry this case. There is no proof that any of that stock went to Elinor Wein and it can't fairly be argued from the evidence in this case.

MR. SORKIN: I am not suggesting that.



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2 MR. GOULD: He exactly suggested that this  
3 minute.

4 THE COURT: Mr. Sorkin, I don't want to have to  
5 repeat myself. Save for the dates which might suggest and  
6 which maybe you can draw inferences to 500 shares sold by Bank  
7 Hofmann out of the Bonavia account, I thought we had  
8 agreed that there is no direct proof, no expert proof, no  
9 any kind of proof that any of the shares from the Bonavia-  
10 Weissinger accounts went to the so-called Elinors or their  
11 customers.

12 MR SORKIN: I concede that, your Honor.  
13 My point, which I am trying to emphasize is that there  
14 was an attempt to move the market up to 60 or 70 dollars  
15 a share by touting the stock to Wein, Hyman and Paruch.

16 THE COURT: All right. Then I wish you would  
17 say it that way.

18 MR. GOULD: He can't even say that. There is  
19 no proof of anything before the conversation with Elinor  
20 Wein. How can he argue that?

21 THE COURT: I don't know what that means,  
22 Mr. Gould. Now you are making another point which is totally  
23 different.

24 MR. GOULD: It is the way he responded to your  
25 Honor. I think we ought to try this case and not something

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2 in his mind.

3 THE COURT: Let us not argue any more.

4 MR. GOULD: I hope not.

5 THE COURT: Would you start over, Mr. Sorkin,  
6 so we can avoid these interruptions if at all possible  
7 and, second of all, would you please make yourself as plain  
8 as possible to avoid this recurring objection by counsel.

9 MR. SORKIN: Your Honor, I say it again,  
10 they agree at the Baur au Lac to rescue Bonavia and  
11 Weissinger. There was a discussion there about raising  
12 the price from 50 to 60 or 70. I point out to your Honor  
13 and to the jury that on April 15th when Stoller and Allen  
14 began to tout the stock to Elinor Wein and to Nathan  
15 Hyman, which I suggest to you is an attempt to raise the  
16 price of the stock up Bank Hofmann begins a rescue of Weiss-  
17 inger and Bonavia.

18 I must go back again, ladies and gentlemen,  
19 to Hyman and to Wein and to Paruch. Innocent brokers  
20 who didn't know what was happening, who recommended the  
21 purchase of this stock to their innocent customers. Ask  
22 yourselves now who is going to rescue them and their  
23 customers?

24 Let us turn to the nominees, ladies and gentle-  
25 men. Mr. Gould is absolutely right. You can use nominees.

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Everybody uses nominees.

But the use of nominees in this particular case based upon the testimony that you heard would have been perfectly legal if, if Mr. Stoller, Mr. D'Onofrio and Mr. Allen had used nominees to take 1,000 shares in the offering, 1,000 shares each, not 5,000 shares, 1,000 shares.

If Mr. Stoller, Mr. Allen and Mr. D'Onofrio had used a nominee to take a total of 1,000 shares we concede it is perfectly legal, it is perfectly proper.

Do you remember the SEC, the guideline was 1,000 shares. Mr. Feldshuh reminded you of that yesterday.

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2 Here, however, according to Mr. Allen, he  
3 testified for the defense, that after his conversation with  
4 Mr. Herbert at Bank Hofmann he told Mr. Stoller, "It's a  
5 hell of a deal," meaning the sale to Bank Hofmann. "Can  
6 you get some people to indicate for you?"

7 Prior to the effective date, ladies and gentle-  
8 men, Mr. Allen is telling Mr. Stoller "Can you get people  
9 to indicate for you?"

10 In other words, plain and simple, we suggest  
11 to you that these nominees were never intended to own the  
12 stock, they were merely fronts for Mr. D'Onofrio, Mr. Stoller  
13 and Mr. Allen.

14 Each of them taking 5,000 shares, not a  
15 thousand shares, which is the guidelines set by the SEC,  
16 but 5,000 shares each. Mr. D'Onofrio, he winds up with 4900.

17 These nominees never really bought the stock.  
18 It was all prearranged.

19 Their names were uses. That is all that hap-  
20 pened, ladies and gentlemen.

21 Allen's own words, ladies and gentlemen:

22 "Get people to indicate for you, for you  
23 5,000 shares."

24 Who did they get? Mr. D'Onofrio got Strauch for  
25 1,000 shares, Recca for 1,000 shares, Howe for 900, Bundy

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2 for 1,000 and Osborne for a thousand.

3 Who did Mr. Allen get? Poor Mr. Allen, he  
4 couldn't find five people who he trusted, so he had to use  
5 his own name to take 1,000 shares. He took 1,000, his wife  
6 Janicehickock took 1,000, Joseph Arden took a thousand,  
7 Joseph Arden's wife using her maiden name just like Mr.  
8 Alle used his wife's maiden name also took 1,000 shares and  
9 Willard LaMorte, 1,000 shares. You remember Mr. LaMorte,  
10 the man who testified here, the man who says he owes Mr. Frank  
11 five or \$6,000. You remember Mr. La Morte. He couldn't  
12 remember what he was shown, what he did. You remember  
13 Mr. LaMorte who testified here today or during the course  
14 of this trial.

15 Mr. Stoller, who does he use? He uses his wife,  
16 He uses Tolansky, Herman Tolansky, he uses Ruth Pollin,  
17 uses Delore Abramson, and he uses William Brief.

18 Now, I suggest to you that this was a blatant  
19 attempt to hide the fact that they were receiving 5,000  
20 shares each. Why? Because in a million years, ladies  
21 and gentlemen, would you know that Ruth Pollin is  
22 Mr. Stoller's mother-in-law? Would you know that Delore  
23 Abramson is Mr. Stoller's mother? Would you know that  
24 Janice Hickock is Mr. Allen's wife's maiden name? Would  
25 you know that Sarah Striziver is Mr. Arden's wife's maiden

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2 name? Why wasn't that disclosed? And even Mr. LaMorte,  
3 even Mr. LaMorte gets in on the act. Because Mr. LaMorte  
4 says that he bought stock in his wife's maiden name,  
5 Minyon Sisin. How simple it would have been just to  
6 put his wife's name, but, no, he uses his wife's maiden  
7 name; we suggest to you to disguise the transaction.

8 MR. FELDSHUH: I object to that, your Honor.  
9 That was with respect to 200 shares and was indicated by  
10 her and was above the thousand. There was no proof that  
11 she was a nominee of Allen or anybody else.

12 LaMorte testified that he bought it for him-  
13 self.

14 THE COURT: Again, Mr. Feldshuh, I can only  
15 say that the jury will decide these arguments.

16 MR. FELDSHUH: Your Honor, there was no testimony  
17 to that effect.

18 THE COURT: Mr. Feldshuh, I am not here to  
19 tell the jury how to decide this case. That is not my  
20 role. Your client quite properly has asked for a jury  
21 trial as he has every right to do. Don't get the Judge to  
22 be the fact finder.

23 MR. FELDSHUH: I am merely saying that when  
24 Mr. Sorkin says that this lady was a nominee or infers --

25 THE COURT: He may be wrong. I wouldn't deny it.

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2 I am not deciding that.

3 I can't decide every argument that you gentle-  
4 men have. That is not my function.

5 MR.FELDSHUH: I will stand on the record, your  
6 Honor.

7 THE COURT: I think that's the better way.

8 MR. SORKIN: Ladies and gentlemen, no one is sug-  
9 gesting that Mr. LaMorte's wife was his nominee. We are  
10 suggesting to you, ladies and gentlemen, that since  
11 Mr. LaMorte was indicating for a thousand shares and the  
12 guideline had to be 1,000, he couldn't very well put  
13 down Mrs. Willard LaMorte for another 200, so he use his  
14 wife's maiden name.

15 On February 2, ladies and gentlemen, 1969,  
16 Mr. D'Onofrio meets with Mr. Frank. Mr. Frank says to  
17 him, "You got to have over 100 shareholders", again to  
18 keep the SEC off guard.

19 In early March 1969 Mr Stoller and Mr. D'Onofrio  
20 go to Switzerland and they instruct Mr. Herbert to put the  
21 shares respectively into their secret coded accounts, Erika,  
22 Shirlev and Gypsy.

23 Do you remember Mr. D'Onofrio testifving that he  
24 was there with Mr. Stoller? Remember Mr. Allen's testimony  
25 when he slipped and he said, yes, his 5,000 shares went



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2 into his account Erika.

3 If this was a negotiated sale to Bank Hofmann,  
4 buying the stock from the nominees at 8-1/4, selling it to the  
5 bank at 10, what's Mr. Allen's 5,000 shares doing in his  
6 account Erika?

7 In Switzerland Mr. Stoller and Mr. D'Onofrio  
8 get receipts. You just seen some of those receipts now.

9 Well, around March 10, 1969, the stock is  
10 now 45 to 50 dollars per share and they agree to make the  
11 cross to Mr. Weissinger and to Mr. Bonavia. Mr. Stoller  
12 calls Mr. Herbert, tells him to get ready for the cross.

13 You remember what a cross is. I think Mr. Allen  
14 testified to what a cross is. A cross is, I believe, what he  
15 said, is stock from one account to another account. It  
16 doesn't appear on the tape. It is internal. It doesn't  
17 appear on the tape.

18 MR. GOULD: Your Honor, I am sorry. There is  
19 no tape in this case. I don't know what the man is  
20 talking about. There is no way this could have appeared  
21 on any tape.

22 THE COURT: I don't disagree. I know of no  
23 tape in this case in the traditional sense of that word  
24 at all.

25 MR. SORKIN: I am just repeating the testimony  
of what Mr. Allen said, your Honor, as to what a cross is.  
I have gone no further than that.

1 gab-1  
2 MR. GOULD: There is a responsibility of counsel  
3 to deal with the evidence and he is talking about things  
4 that have nothing to do with the case, your Honor. There  
5 is no tape.

6 THE COURT: Mr. Gould, please. Just let me  
7 interrupt and say he says, and I do not know because I am  
8 not privy to his notes or the paper in front of him, sir,  
9 as I am sure you agree. He says he is reading from the  
10 testimony of Jerome Allen as a witness at this trial,  
11 is that correct?

12 MR. SORKIN: Correct, your Honor.

13 THE COURT: All right. Let's go ahead. Please  
14 be clear as to when you are reading so we will know.

15 MR. SORKIN: In March 1969, ladies and gentlemen,  
16 the stock is cross from Erika, Shirley and Gypsy to  
17 accounts Barb in and Pompeii and the paper work is prepared  
18 by Mr. Herbert. That is Mr. D'Onofrio's testimony.

19 Now, remember Mr. D'Onofrio said that 18,000-plus  
20 shares were used in the cross. All we have here is 14,900  
21 shares, 5000 for Mr. Stoller, 5000 for Mr. Allen, 4900 for  
22 Mr. D'Onofrio. Where did the additional 3300 shares come  
23 from?

24 They were bought in the after market. That is  
25 what Mr. D'Onofrio testified to. They were bought in the

gab-2

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after market.

That is what Mr. Frank advised him to do back in November, buy additional stock in the after market.

How much stock is crossed into Barbin and Pompeii? 9100 shares each, right down the middle, 18,200 shares.

When Mr. Bonavia came in here with his Swiss bank records, Government Exhibits 65A through 65H, right here, 9100 shares at prices \$44 a share, \$45 a share, \$47 a share, \$50 a share, \$49 a share, 5000 shares at \$50 a share.

That is 9100 shares.

Mr. D'Onofrio said 9100. In walks Mr. Bonavia with his documents to show you 9100 shares.

Remember Mr. Gould mentioned to you Stoller Exhibit Z. Remember that document which Mr. Bonavia testified he signed Barbin, 4318 in the middle of the page and he signed other documents in the middle of the page with just Barbin and just 4318? You take that exhibit into the jury room and you look at it.

Is it more than coincidence, ladies and gentlemen, that whoever prepared that document, and Mr. Bonavia says he didn't prepare the writing on top, whoever prepared that document puts down 15,000 shares on the document, buy me 15,000 shares?

1 gab-3

2 We suggest to you, ladies and gentlemen, that  
3 that 15,000 shares was just enough to cover the 14,900  
4 sitting in Shirley, Erika and Gypsy.

5 And look at the way that document is prepared,  
6 ladies and gentlemen. A few words to the line, stretching  
7 it down, stretching it down to Barbin, 4318. Is that the  
8 way you would prepare an authorization? Take that document  
9 in there and look at it.

10 We suggest to you whoever prepared that document,  
11 whoever prepared that document had to stretch out the words  
12 until it got down to Barbin, 4318.

13 In mid-March or late February of 1969 Mr. D'Onofrio  
14 and Mr. Stoller have a conversation about the pink sheets.  
15 You remember the pink sheets, ladies and gentlemen, the  
16 documents that reflected the bid and asked, what a broker  
17 will buy the stock for and what a broker will sell the  
18 stock for. What does Mr. Stoller say?

19 Mr. Stoller says to Mr. D'Onofrio he will speak  
20 to Mel Schneiderman. Ask yourselves why didn't Mr. Gould  
21 mention Mel Schneiderman to you in his summation? Why  
22 didn't Mr. Feldshuh mention Mel Schneiderman to you in his  
23 summation? Why weren't they mentioned at all, the  
24 conversation between Mr. Stoller and Mr. Schneiderman?

25 Remember what Mr. Schneiderman told you from the

1 gab-4

2 witness stand? He told you that he got a call or he  
3 spoke to Mr. Stoller in person, the first time, and Mr.  
4 Stoller told him that he had a new promotion. He was going  
5 to run the stock and that he and Mr. Allen controlled a  
6 large block of the stock.

7 And most importantly, ladies and gentlemen,  
8 which was never discussed by defense counsel in their summa-  
9 tions, most importantly Mr. Schneiderman is told by Mr.  
10 Stoller, "If you get into trouble, call me."

11 What was Mr. Stoller referring to, "If you get  
12 into trouble, call me"? Trouble with the SEC, trouble with  
13 the U. S. Attorney? Never brought out either on summation  
14 or cross-examination by the defense in this case.

15 On cross-examination Mr. Schneiderman whether  
16 it was unusual that someone who says they control the stock --  
17 whether it is unusual for that someone to ask you to make  
18 a market in the stock, Mr. Schneiderman says, "Yes, it's  
19 unusual."

20 Why wasn't that brought to you on summation? Why  
21 weren't you reminded of that conversation?

22 Let's go back to the conversation. Mr. Stoller,  
23 he is going to get Mel Schneiderman at E.F. Henderson, Mr.  
24 D'Onofrio, he will speak to Amswiss at Baer, Wald & DeBoer.  
25 Well, something happens, ladies and gentlemen. Something

1 I suggest to you a panic, when Mr. Herbert calls  
2 Mr. Stoller and tells him that Emanuel Deetjen won't put the  
3 stock into the street name, won't put the stock which is  
4 registered in the names of these nominees into the name  
5 Emanuel Deetjen.  
6

7 Deetjen didn't believe that Bank Hofmann was the  
8 real owner, didn't believe they were the real owner.

9 MR. GOULD: Your Honor, I must object again.  
10 There is no proof they didn't believe they were the real  
11 owner.

12 THE COURT: Well, that is the inference he would  
13 argue to draw from what we had.

14 MR. GOULD: Let him put it as an inference.

15 THE COURT: Mr. Gould, I really think I am  
16 incapable of putting words in your mouth or his mouth or  
17 anyone else's mouth.

18 MR. GOULD: I guess so, your Honor.

19 THE COURT: I find that beyond my powers, frankly.

20 MR. GOULD: I am sorry, your Honor. I will  
21 try not to object on these points.

22 MR. SORKIN: Page 239 of the transcript, ladies  
23 and gentlemen, at the bottom of the page.

24 "Q Tell us what Mr. Stoller said and what you said  
25 to him.

1 gab-6

2 "A Mr. Stoller told me Mr. Herbert called him  
3 and said that the trade we had made in the cross was going  
4 to be reverted back to our own accounts and that Emanuel  
5 Deetjen representing Bank Hofmann would not transfer the  
6 stock, that Emanuel Deetjen had put up a claim that we were  
7 not the bonafide owners of the stock, did not get bills  
8 of sale when we had come over originally a few weeks prior."

9 MR. GOULD: And that counsel says sustained the  
10 statement to this jury that Deetjen didn't believe that  
11 Bank Hofmann owned the stock?

12 I never heard anything more irresponsible in  
13 my life.

14 End 5B



2 MR. SORKIN: If I can get to Deetjen's testi-  
3 mony with Mr. DeCharriere and Mr. Hanchoz, I think we can  
4 clear that up.

5 THE COURT: May I suggest to you, Mr. Sorkin,  
6 once again and I don't want to have to suggest it again,  
7 please, that you would save yourself a lot of these interrup-  
8 tions and objections if you would only speak a little bit  
9 more precisely as to what you are alluding to when you  
10 purport to either a document or a transcript.

11 MR. SORRY: I am sorry. I certainly will.

12 THE COURT: I am going to ask the jury to dis-  
13 regard this last statement of yours and if you are going  
14 to go to the testimony of Deetjen or the Deetjen personage  
15 or officer or employee, whatever he was, I can't remember,  
16 may I suggest you do that and then make your argument, what-  
17 ever it may be.

18 MR. SORKIN: Very well, your Honor.

19 THE COURT: Since we have had this interruption  
20 would you mind or would you brook, as I like to put it, an  
21 interruption for the recess?

22 MR. SORKIN: Yes, your Honor.

23 THE COURT: We will take a recess, ladies and  
24 gentlemen.

25 (Jury left the courtroom.)

1 qb-2

2 (Recess.)

3 (In open court; jury present.)

4 MR. SORKIN: May I proceed, your Honor?

5 THE COURT: Yes.

6 MR. SORKIN: I think we left off where I was  
7 mentioning Pierre Hancoz to you. Mr. Hancoz was the  
8 registered representative at the Lausanne office of Emanuel  
9 Deetjen even back in 1969. You remember Mr. Hancoz on  
10 or about March 13 gets Government Exhibit 18 in evidence  
11 set to him in the mail. It is the letter which lists the  
12 names of the so-called nominees and asks Deetjen to get that  
13 stock transferred into the name of Emanuel Deetjen.

14 End 6A

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6b pm

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2 Mr. Henchoz has a conversation with Mr. Herbert.  
3 Remember, and you must remember, the judge will instruct  
4 you, Mr. Herbert is an alleged co-conspirator in this case.  
5 More than that he is a defendant in this case. Remember  
6 that. Mr. Herbert is charged with being involved in this  
7 conspiracy just like Mr. Allen, Mr. Stoller and Mr. Frank  
8 are charged with being involved in this conspiracy.

9 As I take a break now let me remind you that  
10 I think the evidence is clear that Mr. Herbert knew what  
11 was going on here. So Mr. Henchoz has a telephone conversation  
12 with Mr. Herbert. What does Mr. Herbert say? Please  
13 confirm what you mean by proof of ownership. Mr. Henchoz  
14 asked him for proof of ownership and Mr. Herbert says  
15 please confirm. So Mr. Henchoz sends a telegram in French,  
16 which is Government's Exhibit 19 in evidence. And he  
17 tells Mr. Herbert in that telegram or letter "We need  
18 proof of ownership". What does Mr. Herbert say?  
19 Mr. Herbert says "I want to speak to your senior partner"  
20 and who is the senior partner for Emanuel Deetjen? Mr.  
21 Jean Francois DeCharriere. You remember Mr. DeCharriere,  
22 the suave looking man from Switzerland who was a senior  
23 partner at Deetjen at the time. Why hasn't the defense  
24 mentioned to you Deetjen's involvement in this? Why  
25 wasn't DeCharriere and Von Bredow mentioned to you and

1 jnhr 2

2 Henchoz mentioned to you, and Shelly Levine, the man who  
3 was the assistant margin clerk back in 1969. Mr. Levine  
4 who receives an identical letter but a different letter  
5 of the one that is sent to Mr. Henchoz and with that letter  
6 are certificates for 14,900 shares of Training With the  
7 Pros.

8 Do you remember Mr. Levine testifying? None  
9 of that was ever brought to your attention. Mr. DeCharriere now  
10 has a conversation with Mr. Herbert. Do you remember  
11 Mr. DeCharriere testified that Herbert told him when  
12 DeCharriere asked for proof of ownership that Mr.  
13 Herbert replied "Well, it is breaking the law of the  
14 bank's secrecy if I do so."

15 Let us stay on that question of secrecy.

16 Secrecy from what? What law would be --  
17 Mr. Herbert be breaking if he sent proof of ownership to  
18 Mr. DeCharriere? He would be breaking the law  
19 of bank secrecy. You ask yourselves, secrecy from what?

20 MR. GOULD: If your Honor please, the only proof  
21 in this case on that subject is with respect to the  
22 law of Switzerland, something when these Deetjen people  
23 were there. There isn't a suggestion that there was any  
24 special secrecy other than what is covered in the Swiss  
25 law and this is as we'll known as 2 and 2 are 4. It is an

1 jqbr 3

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2 unfair inference from any testimony in this case that any  
3 of the defendants conspired to keep these things secret  
4 other than the fact that they had Swiss accounts.

5 THE COURT: I think that is an issue which  
6 clearly the jury and not the Judge will decide. Let us move  
7 on, Mr. Sorkin.

8 MR. SORKIN: Yes, your Honor.

9 You remember that conversation, ladies and  
10 gentlemen. Page 677.

11 "O Tellus please what you said and what Mr.  
12 Herbert said?

13 "A I said to Mr. Herbert that regarding the  
14 transfer in street name of the 40,900 shares -- and I think  
15 we will all concede it was 14,900 shares and this was an  
16 error with all due respects on the reporting service it  
17 should have been 14,900 -- 14,900 shares of Training With  
18 the Pros. I will not do it unless I get proof of ownership  
19 says Mr. DeCharriere and Herbert got very upset about  
20 it and said 'Well, it is breaking the law of the bank's  
21 secrecy if I do so.'"

22 What secrecy and from whom? I suggest to  
23 you, ladies and gentlemen, that the whole purpose  
24 of having the Swiss account is to take advantage of Swiss  
25 secrecy laws.

1 jqr 4

2 On cross examination Mr. DeCharriere said  
3 that Bank Hofmann's request, and this was in response  
4 to Mr. Gould's question is, not the government's,  
5 Mr. DeCharriere said that Bank Hoffmann's request was  
6 most unusual.

7 In fact he had never seen certificates  
8 delivered to him in the name of individuals. Not at least  
9 in that amount, 14,900 shares.

10 And remember something else. Mr. Gould  
11 was asking Mr. Henchoz and Mr. Von Bredow about what they  
12 were concerned about, and I think Mr. Von Bredow and I think  
13 Mr. Henchoz said that they were concerned about stolen  
14 securities.

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2 Mr. DeCharriere said, "14,900 shares, trading  
3 at the time at 66, was pretty hectic," use the word  
4 "hectic", "a pretty high price stock coming from 26 only  
5 a couple of weeks ago."

6 Mr. DeCharriere didn't even want bank grants, he  
7 wanted proof of ownership. Send a letter. Remember the  
8 letter that is send? Ned Purvis, general counsel, who  
9 didn't testify here today or at this trial, but who was  
10 general counsel, and his testimony came in by stipulation.  
11 Mr. Purvis was general counsel to Emanuel Deetjen back in  
12 1969. Mr. Purvis received in the mail a letter from Bank  
13 Hoffman and in that letter it is disclosed that there are  
14 three clients of Bank Hofmann, Messrs. Stoller, Allen  
15 and D'Onofrio. Remember that letter?

16 What did he receive with that letter, ladies  
17 and gentlemen? He received government exhibits which we  
18 are going to get to in a little while because they are  
19 terribly significant in your consideration here. He  
20 received Government's Exhibits 5, 6, 7, 8, 9 and 14.  
21 Manufactured documents by the government? They came from  
22 Switzerland and were sent to Mr. Purvis, the D'Onofrio's  
23 receipts.

24 What else does he receive? Government's  
25 Exhibits 21 through 30, the Allen receipts and the Stoller



1 gabr 2

2 receipts.

3 That letter which you are entitled to look at when  
4 you go into that jury room to begin your deliberations  
5 I suggest to you was a desperate attempt by Mr. Herbert to  
6 get that stock transferred into street name. This is a letter  
7 sent from Mr. Herbert to Emanuel Deetjen, Jean Francois  
8 DeCharriere, which Mr. Purvis would have testified that he  
9 received. It says here, "Xerox copies of all confirmations  
10 covering sales of 14,900 shares by different individuals  
11 to our three clients, i.e., Mr. Allen, Mr. Stoller and  
12 Mr. D'Onofrio."

13 At the bottom he puts this in because he is so  
14 concerned about Swiss secrecy law. "It is fully under-  
15 stood that these confirmations are strictly for your own  
16 perusal and must not be revealed to anybody."

17 You can look at that as we talk about these  
18 receipts and these proofs of ownership, ladies and  
19 gentlemen.

20 Now, remember, before we turn to these receipts  
21 that Mr. Allen couldn't go overseas. He was under indict-  
22 ment.

23 So he had to have his receipts notarized.

24 Who does he go to to have his receipts notarized?

25 Martin Frank.

1 gabr 3

2 Remember the conversation that Mr. Stoller  
3 has with Mr. Frank, according to the evidence? "We are  
4 about to lose a million dollars. We need bills of sale  
5 from the nominees."

6 According to Mr. D'Onofrio, Mr. Frank then took  
7 out his notary stamp and went right down the notary receipts  
8 for Mr. Allen, one, two, three, four, five.

9 You are going to see when you look at these  
10 receipts why that is so corroborative of what Mr. D'Onofrio  
11 says that you will have no doubts in your mind that that is  
12 what happened. We are going to go to those receipts in a  
13 little while.

14 Remember Mr. Allen? Remember Mr. Allen testified  
15 that he typed up receipts 21 through 31, their witness.  
16 And then on cross examination we looked at the receipts  
17 and he says, "I used two typewriters."

18 And then we showed him receipt No. 31 and  
19 he says, "Three typewriters. I used my German typewriter".

20 Can you picture Mr. Allen sitting at a table  
21 with three typewriters in front of him typing up 11  
22 receipts? Picture that in your mind.

23 Mr. D'Onofrio told you where that receipt  
24 No. 31, Mr. Stoller's receipt, was prepared. That was  
25 prepared in Zurich where Mr. Herbert's secretary typed it

up, the German umlaut over the U.

Do you really believe Mr. Allen typed up one receipt of Mr. Stoller's on his German typewriter and the other receipts were prepared on his two American typewriters?

You look at Receipt No. 31, when Mr. Allen was caught with, "What about the U, Mr. Allen, the umlaut over the U, remember that?"

"Oh, yes, yes, I have a German typewriter. I did that one on my German typewriter, My Adler."

Mr. D'Onofrio told you what happened. He told you when they got to Switzerland Mr. Stoller didn't have his receipt, which is No. 31, and it was typed up over there by Mr. Herbert's secretary.

Now, let us get to the receipts.

Let us get to these receipts. Manufactured by the government? These receipts --

MR.GOULD: If your Honor please, there is not the faintest suggestion in this case that these receipts are manufactured by anyone, that they are --

MR. SORKIN: May I make my argument, your Honor, without these objections?

MR.GOULD: That is not a fair inference from any

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of the testimony in this case.

THE COURT: I don't think that is counsel's point, Mr. Gould. He is indulging in what might be called rhetoric, to be sure, but others have done the same in my time and in yours. Let us go on.

MR. SORKIN: Thank you, your Honor.

Ladies and gentlemen of the jury --

MR. GOULD: I don't intend to be shouted down by this young man. I tell your Honor that I think it is improper for counsel to argue that we have contended that these receipts are manufactured --

THE COURT: I would agree with you. You have not, as I understand it.

On the other hand, I suppose that what this is is a form of rhetoric in argument. You would agree with that, wouldn't you?

MR. GOULD: No, I would not, with all respect, your Honor. It is something very different from rhetoric. Rhetoric no.

THE COURT: I will then accept what you say and point out that we all recognize or should recognize that no one in the defense side has claimed that the government manufactured this series of Exhibits GX 21 through what, 33.

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2 MR.SORKIN: 21 through 21, your Honor.

3 THE COURT: 31.

4 MR. SORKIN: And 5 through 9 and No. 14.

5 THE COURT: Allright. Let us go ahead.

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MR. SORKIN: Thank you, your Honor.

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Remember Mr. Allen testified, ladies and gentlemen, that when he prepared his receipts, not Mr. D'Onofrio's -- when he prepared his receipts he left out the total purchase price and the price per share? Remember he testified that way?

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Remember Mr. D'Onofrio testified that when they got over to Switzerland in March of 1969, when the stock was around \$50 a share, that Herbert suggested, "Hey, we can send the stock to" -- "these receipts to Deetjen, the stock is too high. We will have to block out, block out the total purchase price and the price per share."

14

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16

Mr. Herbert sends the documents out, comes back, the price is blocked out. I want you to look at these receipts.

17

18

19

I first want you to look at Mr. D'Onofrio's receipts. Mr. D'Onofrio's receipts are written up in his hand. He testified to that.

20

21

22

23

I want you to look at them carefully and I want you to see that it should be crystal-clear to you that these prices per share and total purchase price was blocked out.

24

25

Look at Bundy's, something was put over this. Look at Strauch, something was put over this. Look at

1 Osborn, something was put over this. Look at Recca, some-  
2 thing was blocked out here and look at Houch, they forgot  
3 how to block out the "00" over the 100. Start looking  
4 at these documents, ladies and gentlemen, which you are  
5 entitled also to take with you into the jury room.

6 What about Mr. D'Onofrio's receipt which is  
7 dated February 25, 1969? Remember the significance of  
8 February 25, the very day that Bank Hofmann began to buy  
9 this stock in the after market? Look here, ladies and  
10 gentlemen. Look carefully. The light isn't too good  
11 where you are now, but take these receipts into the jury  
12 room and look at it in the light of day. You are going  
13 to see I suggest to you that something was blocked out  
14 here, and if you look hard you can just see the bottom of  
15 the line of the tape, wherever it is, to block out the  
16 purchase price.

17 Let's look now, ladies and gentlemen, at the  
18 Frank notarized receipts, Mr. Allen's receipts. Remember  
19 Mr. Allen couldn't go overseas so he had to get Mr. Frank to  
20 put a stamp on it. We are going to get to Mr. Frank's  
21 stamp in a little while.

22 Let's just stay with these receipts. You look  
23 carefully at Mr. Arden's, ladies and gentlemen. You are  
24 going to see something was blocked out on the purchase price.  
25



1 gab-3

2 There is a little line underneath. Look at  
3 Striziver's, you can barely see it, the outline of it  
4 there.

5 Look, look at LaMorte's and you are going to  
6 see the bottom of it just blocked out there. Look, look at  
7 Hickok's and you will see just barely that something was  
8 put over the purchase price and the price per share.

9 Mr. Allen comes in and tells you that he inad-  
10 vertently or mistakenly left it out. Start looking at  
11 Allen's.

12 Let's look at Stoller's, ladies and gentlemen.  
13 Take a look at Mildred Steiler. This is more obvious. Look  
14 here and you will see that something is blocked out there,  
15 per share for a total of blank. Something was put over  
16 the total purchase price.

17 Look again at Philip Stoller's, Delore Abramson,  
18 his mother, you will see something blocked out there.  
19 Terrible job of blocking out the price, but it is right here,  
20 ladies and gentlemen.

21 If you look at it in a good light in that jury  
22 room, you are going to see it. Look at Mr. Stoller's.  
23 Look at Mr. Stoller's. You will see Mr. Stoller's more  
24 obvious than the others. See the little line underneath  
25 there and see the line over here? Something was put over

2 those prices, ladies and gentlemen. Start looking at that.

3 Start looking at Mildred Stoller's.

4 Remember Mr. D'Onofrio's testimony in March,  
5 ladies and gentlemen. In March that price was up to \$50  
6 a share. What would Deetjen think, ladies and gentlemen,  
7 if they get receipts in the mail which show that Stoller,  
8 Allen and D'Onofrio bought this stock on February 20th,  
9 1969, for \$8.25 and less than a month later the stock is  
10 \$50 a share? I saved this for last, ladies and gentlemen.  
11 I want you to look at Mr. Allen's himself. This is Mr.  
12 Allen's receipt, the receipt dated February 25, 1969. Look  
13 at his receipt and when I pass it around to you I want you  
14 to be cognizant of only one thing on it. You can take  
15 all of these into the jury room, all the Government exhibits  
16 and all the defendants' exhibits.

17 Look at them all and compare them. Take them  
18 in the jury room and look at them. I want to show you this.  
19 Jerome Allen's name is signed here. If you look very  
20 carefully at the "J" in Jerome Allen, ladies and gentlemen,  
21 Jerome, you will see that the top of the J is cut off and  
22 if you look at it you will see that it is cut off, ladies  
23 and gentlemen, because whoever blocked out the price there  
24 put the slip of paper a little bit lower than they should  
25 have and they cut off the top of the J of Mr. Allen's name.

1 Take a look at that one.

2 Those of you who are now looking at Mr. Allen's  
3 receipts, the so-called notarized receipts, let me ask you  
4 this: How many of you have ever had your receipts notar-  
5 ized -- I am sorry, your signatures notarized? How many  
6 people, any of you, have gone to a bank or to a notary and  
7 had your signature notarized and at the bottom of the docu-  
8 ment it says, "sworn to before me this blank day of such  
9 and such." Have you ever in your life seen a notarization  
10 like this one, no date, no sworn to, nothing?

11 And why? Because as Mr. D'Onofrio said, the bank  
12 knew Mr. Frank. They knew Mr. Frank's signature. They would  
13 accept it.

14 Why did they know Mr. Frank's signature? Because  
15 Mr. Frank had an account at Bank Hofmann named Lance.

16 Look at the J, ladies and gentlemen, as you go  
17 through this. Look at the top of the J that has been cut  
18 off. Where is the date on Mr. Allen's receipts when this  
19 was prepared?

20 Remember Mr. LaMorte and Mr. Arden? Nice old  
21 Mr. Arden, couldn't remember anything, didn't know what he  
22 was shown at the SEC, didn't know what he was shown here, didn'  
23 know any of the documents that were shown to him.

24 Don't be angry at Mr. Arden. Mr. Gould is absolutely  
25

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correct, don't be angry at Mr.Arden.

Mr. Arden came in here to do one thing, and that was to protect Mr. Stoller because he testified he treated Mr.Stoller as a son.

So don't be angry at his testimony.

He did what he thought he could do and that was to protect Mr. Stoller.

But think of his testimony when he was asked about his testimony at the SEC.

End 7B

2 Let's go back to 1969, ladies and gentlemen.  
3 At the Swissair lounge, Mr. Stoller and Mr.D'Onofrio  
4 stacked their receipts up. These receipts, Erika, Shirley  
5 and Gypsy. Mr.D'Onofrio testified that he saw all the  
6 receipts at Bank Hofmann, all the receipts at Bank Hofmann.  
7 He saw Mr. Stoller's in a pile. He saw his own in a pile  
8 and he saw Mr.Allen's in a pile.

9 Something else too that is very significant  
10 that I want you to notice about these receipts, ladies  
11 and gentlemen. With the exception of Mr. D'Onofrio's,  
12 which are dated either February 21 or February 22, Mr.  
13 Stoller's and Mr. Allen's are dated February 20. February  
14 20, 1969.

15 Why is that date significant? I will tell  
16 you why that date is significant, ladies and gentlemen.  
17 Because Mr. Allen testified that he bought the stock, gave  
18 a check and received the certificates. You look at these  
19 certificates and you will see that on every one of these  
20 certificates the issue date is February 21, 1969.

21 MR. GOULD: Your Honor, I must object again.  
22 There is no possible connection on the proof in this  
23 case between the date of payment and the date of issue.

24 MR. SORKIN: Your Honor, there is testimony  
25 from Mr. Allen that he received the certificates from

1 qb-2

2 his people on the dates that he paid for the stock. I  
3 would like to continue my argument, your Honor, if I may.

4 MR. GOULD: I suggest it is an unfair argument  
5 from anything in the case. There is no evidence that  
6 there is any relationship between the date of payments and  
7 the date of issuance. In fact, the evidence is quite the  
8 contrary.

9 MR. SORKIN: Respectfully if I may, if Mr.  
10 Gould is going to make an objection, he has had an opportunity  
11 to sum up before.

12 MR. GOULD: He should do it honestly.

13 MR. SORKIN: If your Honor wants to rule the  
14 objection, please, your Honor, so as not to continue this.

15 THE COURT: If you two would give me the oppor-  
16 tunity I would be glad to oblige. Once again, I don't like  
17 to talk when other people are talking, that is why I am  
18 silent.

19 Mr. Gould, I would say if this is an objection  
20 I would overrule it. I would not say that what you are  
21 saying is wrong. That is not the purport of my ruling.

22 Again, I would allow the jury to decide this.  
23 I have no quarrel with you. Maybe you are absolutely  
24 right, but I don't think at this point I ought to be deciding  
25 these factual matters.

1 qb-3 3422  
2 MR. SORKIN: February 21, ladies and gentlemen,  
3 that is when all these certificates were issued. Every  
4 single one of the 14,900 shares were issued on February  
5 21, 1969, his receipts are dated February 20, 1969,  
6 every one of his receipts, and every one of Mr. Stoller's  
7 receipts with the exception of the receipts that they re-  
8 ceived from Bank Hofmann which show February 25, 1969.

9 Something else too which I think is terribly  
10 significant and another thing like many things that the  
11 Government has said that the defense never mentioned to  
12 you in their summations: On February 25, the dates of  
13 those receipts, the date that it says on Mr. Allen's and Mr.  
14 Stoller's "today I sold 5000 shares to Bank Hofmann," on  
15 that date, if you look at these receipts, "Please take  
16 this as a confirmation that on this day I have sold to  
17 you " -- excuse me, Mr. Stoller's says February 26. Mr.  
18 Allen's, February 25. February 25 and February 26, today,  
19 February 26, 1969, says Mr. Allen's, "I sold to Bank Hofmann  
20 5000 common shares of Training With the Pros common stock  
21 at blank share for a total of blank."

22 That is another point you should not forget.

23 What kind of notarial, what kind of notary  
24 notarizes a document where there are significant blanks left  
25 on a document? If Mr. Allen is correct that he left



qb-4

1 these blanks out, ask yourselves, what kind of notary like  
2 Mr. Frank notarizes documents where there are blanks on the  
3 document? Why is the date of February 26 and the  
4 date of February 25 important? Why are those two dates  
5 important? For this reason: These certificates, ladies  
6 and gentlemen, Government Exhibits 2E, 2H, 2K, 2M, 2N and  
7 2-O and 2P, the signatures on the back of these certificates  
8 are not guaranteed in the case of Ruth Pollin, March 31,  
9 1969.

10 Mildred Stoller, March 3, 1969. Delore Abramson,  
11 February 26, 1969. Jerome Allen, Jerome Robert Allen,  
12 March 6, 1969.

13 I submit to you, ladies and gentlemen, that on  
14 February 25, these certificates were still in the United  
15 States. They couldn't possibly have been sold to Bank Hofmann  
16 on February 25.

17 MR. GOULD: If your Honor please, I object  
18 to that. There is no need for certificates to be transferred  
19 for a sale. That has been proved in this sale by repeated  
20 witnesses.

21 This is a dishonest presentation.

22 MR. SORKIN: Mr. Allen testified that he deposited  
23 these certificates into his account Erika at Bank Hofmann.  
24 I think it is a fair argument.  
25

1 qb-5  
2 MR. GOULD: You can sell stock without certi-  
3 ficates. A child knows that. Nobody handles certificates.  
4 A child knows that.

5 MR. SORKIN: I submit it is fair argument.

6 MR. GOULD: It is not an argument. It is a dis-  
7 honest presentation.

8 THE COURT: Gentlemen, again, may I say  
9 first of all on quite a different basis, Mr. Sorkin, I did  
10 not know it as part of the Government's theory, and I don't  
11 see any basis that there is, of the difference between  
12 the sale date and a delivery date.

13 MR. SORKIN: It is, your Honor, and I was going  
14 to get to that to the jury. The Government's theory is  
15 that these documents were back dated.

16 THE COURT: That is another thing. So far as  
17 you suggest that there is anything wrong with having dif-  
18 ferent dates as between the purchase and delivery and  
19 so on, that is quite another thing.

20 MR. SORKIN: I will make my argument.

21 THE COURT: Again, I don't agree with Mr. Gould  
22 in his ultimate conclusion, which is at least implicit in  
23 his objection, but I point out to you that you can avoid  
24 this if you would tell us frankly what your argument is  
25 without this windup. I think what you are now suggesting

1 you would like to argue is fair argument and I will  
2 permit it, but please do it that way as you now suggest you  
3 want to do it.  
4

5 MR. SORKIN: Yes, your Honor.

6 Your Honor, ladies and gentlemen, we suggest  
7 to you and the testimony is here that Deetjen refused to  
8 transfer this stock when they got it on March 13, 1969, that  
9 is the testimony of Shelley Levine, that they did not get  
10 these receipts until at least March 28, 1969, because that  
11 is the date of the letter from Mr. DeCharriere and that  
12 Mr. D'Onofrio's testimony is that when they went to Mr.  
13 Frank after learning of the problem at Deetjen they back-  
14 dated all these receipts.

15 MR. FELDSHUH: If your Honor please, that is the  
16 proof. It is not the document and he is misrepresenting  
17 the document.

18 THE COURT: Mr. Feldshuh, you may be right but  
19 I insist that we not have a repetitive interruption. This  
20 is precisely the point that I just dealt with or  
21 attempted to deal with at least a minute ago.

22 MR. FELDSHUH: It just says he confirms that on  
23 a certain date the stock was sold, not that they were sold  
24 on the date --

25 THE COURT: Mr. Feldshuh, you may be right.

1 Factually this is not supported by the proof. I understand  
2 that.

3 MR. FELDSHUH: We don't have an opportunity  
4 to correct this man.

5 THE COURT: It is not a matter of correcting,  
6 sir. He is making an argument. If the facts don't support  
7 the argument as is the case with your argument or any other  
8 lawyer's argument, that is a different thing. You may  
9 not think much of the argument. You may be right. But  
10 that is not my function. The jury will decide whether  
11 this is a justified argument on the facts as they determine  
12 them, and not you or I or anybody else may determine them.

13 Please, Mr. Sorkin, go ahead.

14 MR. SORKIN: Thank you, your Honor.

15 Something else too, something else equally sig-  
16 nificant about that February 20, 1969 date. That February  
17 20, 1969 date, ladies and gentlemen, you look at this  
18 chart, Government Exhibit 106 and you will note that on  
19 February 20, 1969, there was no quote in the pink sheets  
20 on that particular day, only in the 24th do they first begin  
21 quoting it in the pink sheets, February 24.

22 We suggest to you, ladies and gentlemen, that  
23 the date, February 20 was not some idle date chosen out  
24 of a calendar. It was chosen because of Deetjen, and we  
25

1 suggest this to you and we think you can properly infer this,  
2 because if Deetjen looked at those receipts and then looked  
3 in the pink sheets they would see that there was no bid  
4 and asked quoted in the pink sheets on February 20.

5  
6 After the cross is made, ladies and gentlemen,  
7 Mr. D'Onofrio is asked by Mr. Stoller and Mr. Allen what  
8 they are going to do to tout the stock.

9 What does Mr. Allen say? Mr. Allen says that  
10 he will speak to Brad Thurlow. You remember Mr. Bonavia?  
11 Mr. Bonavia came in and Mr. Bonavia said that in his  
12 conversation with Mr. Stoller after the stock had been put in  
13 his account Barbin that for \$40,000 Mr. Stoller can run that  
14 stock again and get Mr. Bonavia his money back.

15 How was he going to run the stock? He was  
16 going to run the stock by getting Mr. Allen to speak  
17 to the Wall Street Journal, Value Line and talk to Mr.  
18 Brad Thurlow. That is what Mr. Bonavia said.

19 In April 1969, April 15, Mr. Stoller has a con-  
20 versation with Mr. Hyman. You recall Mr. Hyman's testimony.  
21 He said he often called Mr. Stoller to find out what is  
22 good in the market. He relied on Mr. Stoller. He relied  
23 on Mr. Stoller's expertise and knowledge in the market.

24 And Mr. Allen, he calls up one of the Elinors,  
25 Elinor Wein, and he tells her that the stock is going to

1  
2 be another IBM.

3 Do you remember her testimony, another IBM.

4 And Allen is so excited by the stock in April  
5 of 1969 that he says, "If I have got to lend you some  
6 money to buy it, I will lend it to you, you buy the stock."

7 And he sees her later in the day and she tells  
8 him that she did buy the stock for herself and for her  
9 husband, and what does Mr. Allen say, "Good, you are going  
10 to make money on it."

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2 Mr. Allen was asked about this conversation, this  
3 conversation with Wein and he says he doesn't remember it,  
4 he spoke to so many brokers all the time.

5 What does Mr. Stoller say to Mr. Hyman? He  
6 says you are going to make a lot of money on it. And after  
7 these conversations what does Elinor Wein do? She talks  
8 to Walter Paruch, her partner. And they buy stock. What  
9 does Mr. Hyman do? He buys stock. Ladies and gentlemen,  
10 the scheme, the plan, the pattern should be clear to you  
11 by now. We suggest to you that in April when Mr. Stoller  
12 and Mr. Allen spoke to Elinor Wein and Nathan Hyman that  
13 was an attempt, we suggest to you, to raise the price of  
14 the stock in the market so that Mr. Bonavia and Mr. Weiss-  
15 inger could sell out at Bank Hofmann at a price higher  
16 than what it was crossed in there accounts for. And ask  
17 yourselves something else, something else which the de-  
18 fense didn't suggest to you, didn't remind you of, didn't  
19 talk to you about -- there are so many things they didn't  
20 talk to you about from the witnesses in the case and from  
21 the documents in evidence. Ask yourselves if Mr. Allen  
22 and Mr. Stoller thought this stock was so good, another  
23 winner, ask yourselves why did they wait until April before  
24 they spoke to the Elinors, Wein and Hyman?

25 I suggest to you that they didn't wait until



1 April because they forgot, they waited until April because  
2 they had to wait until Deetjen decided to transfer that  
3 stock into street name. Remember the date of the letter  
4 to DeCharriere, March 28, 1969? As of March 28, 1969 they  
5 were still hassling about transferring that stock into street  
6 name.  
7

8 If this stock was another winner why didn't  
9 Mr. Allen and Mr. Stoller in speaking to all the brokers  
10 that they spoke to, and Mr. Allen testified that he spoke  
11 to many brokers, why did they wait until April when the stock  
12 was still around \$50 a share?

13 Something else happens too, ladies and gentle-  
14 men. Something happens in April. Mr. D'Onofrio learns  
15 about a crank letter that is sent to -- I will take that  
16 back. He learns about a crank letter sent to the SEC. There  
17 is an SEC investigation. And he learns from Mr. Moss,  
18 and what does he do? He togs Mr. Allen and he goes to  
19 Mr. Stoller. And where do the three of them go? They go  
20 to the man who every time has been a problem in this  
21 particular case, they went to Martin Frank. That is back  
22 in November when he laid out the deal, when they needed  
23 receipts in March of '69 and now in April of '69,  
24 right back to Martin Frank.

25 What does Mr. Frank tell them? He says

1 jgbr 3

2 "Make sure that my firm, Feldshuh & Frank, represents the  
3 company."

4 Let us turn to Marilyn Herzfeld's testimony  
5 for a moment. She testified that D'Onofrio told her that  
6 he would get the name of a good SEC lawyer, someone who could  
7 represent the company.

8 Do you remember that testimony?

9 Do you remember that testimony  
10 that Marilyn Herzfeld said that D'Onofrio had mentioned  
11 to Moss that they were going to get a good SEC lawyer and  
12 Moss mentioned it to her and who of all the SEC lawyers in  
13 New York City does Mr. D'Onofrio suggest to Marilyn  
14 Herzfeld and Elmer Moss? Who of all the lawyers available  
15 to represent Training With the Pros? Who does he suggest?  
16 Martin Frank.

17 Something else Marilyn Herzfeld testified to.  
18 She testified that when she was up in Mr. Frank's office  
19 D'Onofrio comes in and D'Onofrio says "Hi, I am Ray D'Onofrio"  
20 and Mr. Frank says "Glad to meet you" and Mr. Feldshuh  
21 has suggested to you that Mr. D'Onofrio didn't know Mr.  
22 Frank before that time.

23 Do you remember his summation yesterday? Well,  
24 let me ask you, ladies and gentlemen, if you were Marilyn  
25 Herzfeld and you didn't know what was going on, do you

1 jqbr 4

2 think Mr. D'Onofrio was going to come up there and make  
3 some incriminating statement to Mr. Frank? They are  
4 trying to keep Marilyn Herzfeld in the dark. Of course  
5 they are going to say something innocuous like "Hi, glad to  
6 meet you." They are not going to go into what is  
7 happening because there is a third party --

8 MR. GOULD: There is nothing like that in  
9 D'Onofrio's testimony.

10 THE COURT: Again, Mr. Gould, I would not argue  
11 with you. But the jury will decide that. I cannot be a  
12 decider of the facts. I am not going to repeat this again.

13 MR. GOULD: I must protest when something like  
14 this is said which is not in the records.

15 THE COURT: I can't say whether it is in the  
16 records or not and I don't purport to even if I thought I  
17 could.

18 MR. SORKIN: I suggest to you, ladies and  
19 gentlemen, that that is the very reason why Mr. D'Onofrio  
20 says "Hi, I am Ray D'Onofrio" --

21 MR. GOULD: If your Honor please, D'Onofrio is their  
22 witness. If there was anything like that they had the  
23 opportunity of eliciting it from him.

24 MR. SORKIN: May I be allowed to make my argu-  
25 ment. --

1 jqbr 5

2 MR. GOULD: You can't go on stating untruths.

3 MR. SORKIN: There is nothing untrue about  
4 this. The jury can properly infer that the very reason --  
5 I am sorry, your Honor, I don't mean to press the point.

6 THE COURT: May I suggest it is now 4:30 and  
7 I think for reasons I explained to you during the recess,  
8 Mr. Sorkin, I am sure you have a great deal more to cover.  
9 I do not intend to inhibit you as I promised you thrice at  
10 least today.

11 May I suggest that we start afresh in the morning  
12 and if you want to read the testimony of D'Onofrio  
13 or allude to it, fine.

14 If you want to make the arguments of what  
15 inferences you ask the jury to consider drawing, fine.

16 We will start on that tomorrow.

17 MR. SORKIN: Thank you, your Honor.

18 THE COURT: Ladies and gentlemen of the jury,  
19 we will suspend now and we will resume as usual at 9:30  
20 tomorrow morning.

21 I am hopeful that the government will finish  
22 their summation relatively early, at least Mr. Sorkin  
23 I believe plans to, I am hopeful that I will be able to  
24 instruct you on the law and we will still hold more or less  
25 to the schedule I opined about a couple of days ago.

1 jqbr 6

2 See you in the morning.

3 (The jury left the courtroom.)

4 (At the side bar.)

5 THE COURT: Mr. Gould and Mr. Feldshuh, I think  
6 it is getting a little out of hand. I have tried to explain  
7 to you gentlemen that I am not privy to the thoughts of  
8 counsel's summing up. I do not put the words in his mouth.  
9 I completely disclaim any power to put words in anybody's  
10 mouth. You may be right in your shrill contentions which  
11 have risen up so much this afternoon as to astonish me.  
12 I have never seen anything like this in 12 years plus as  
13 a United States trial judge. It may be that your  
14 version of the records is correct. I accept that. But  
15 I do not want to be put in the position of having to tell  
16 you again that I do not manufacture or create out of my mind  
17 what the facts are, similarly I do not claim to have total  
18 recall of this record which as you all agree is in excess  
19 of 3000 pages.

20 I have never been furnished copies of the  
21 documents by any lawyer in this case except upon an  
22 occasional brow-beating on my part to get a look at one.  
23 Therefore, I find it a little bit offensive, unnecessary  
24 and distorting to be constantly interrupted with the idea  
25 that the facts are as one or the other of you gentlemen

1 jqbr 7

2 say they are. I do not deny that you can be right.

3 I don't know in some instances. You may well be right. In some  
4 instances I have tried to fairly say that my recollection  
5 accords with yours. But I have been subjected to an  
6 unceasing barrage of interruptions all afternoon when  
7 I have attempted to rule on your objections. I am not going  
8 to tolerate it much longer.

9 I must say you have been aided and abetted by  
10 Mr. Sorkin who responds in a chorus with you. Tomorrow  
11 morning if you wish to object say so. And Mr. Sorkin,  
12 will you please then keep yourself quiet so I can rule.

13 MR.SORKIN: Yes, your Honor.

14 THE COURT: I don't like to bolt off the  
15 bench and put my hands over a lawyer's mouth particularly  
16 when I respect the lawyers and believe it or not I respect  
17 you gentlemen in various ways.

18 Second of all, it is improvident and uncalled  
19 for to constantly jump on me by loud voices telling me  
20 your version of the facts and your version of the law even  
21 though that version or those versions may be correct. I can  
22 respond with alacrity when a lawyer properly objects.  
23 I don't need to have a long tirade which tell me what the  
24 facts are what the law is. I think this is really demeaning  
25 to you, if I may say so. I know in the system we live you



1 jabr 8

2 have unfettered rights beyond description in this regard.

3 But I take it that you would all agree with me  
4 that even if that is so there comes a point where it is  
5 overdone and I think we crossed that Rubicon or we went down  
6 that road to Damascus two hours ago.

7 I know this has been difficult for all of you  
8 and I don't blame you for that. You fought hard and on the  
9 whole you fought well. But let us not spoil it with this  
10 kind of thing at the very last moment.

11 In fairness to Mr. Feldshuh, I should observe,  
12 I don't think he heard certain things that were said by  
13 Mr. Gould and me and perhaps Mr. Sorkin.

14 I can only say to Mr. Feldshuh I am sorry  
15 if that is true that you shouldn't be blamed by any stretch  
16 of the imagination. But, you see, it doesn't come out that  
17 way. Please keep this in mind. If you want to object,  
18 you are entitled to. But just say "Objection" and I will  
19 rule.

20 MR. GOULD: I accept your Honor's rebuke which I  
21 think is completely justified.

22 THE COURT: A little bit of this, gentlemen, fine,  
23 but it doesn't have to be repeated.

24 MR. GOULD: I concede it and I don't want to go  
25 into an explanation of why I have reacted with as much



1 jgbr 9

2 vigor.

3 Just as your Honor says in 12 years you have never  
4 seen anything like this, I tell you in 40 years I have never  
5 seen anything like this.

6 THE COURT: My only point, which you have been  
7 gracious enough to accept, is all you have to do is object.  
8 There are so many things you are right on and I think there  
9 are so many things Sorkin is right on.

10 I shouldn't tell the jury how to review the re-  
11 cord. That is unfair to me. It makes me look like I am  
12 unwilling to aid you properly on objections. It makes the  
13 jury think that somehow I am going to decide this case  
14 for them. This is wrong.

15 MR. GOULD: I think your Honor is right.

16 THE COURT: Mr. Stoller and Mr. Frank had every  
17 right to ask for a jury trial. That being so I wish their  
18 lawyers wouldn't ask me to play jury. I know you under-  
19 stand that.

20 Mr. Gould, I promised you off the record I would  
21 explain where you are tomorrow and why it is necessary.  
22 That is fair enough. On Mr. Allen's side, I assume with  
23 Mr. Stoller's agreement --

24 MR. GOULD: I represent to your Honor that  
25 we have the agreement and he represents that.

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2 THE COURT: Thank you, gentlemen.

3 (Adjourned to Wednesday, October 16, 1974,  
4 at 9:30 a.m.)  
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2 United States of america

3 vs.

74 Cr. 159

4 Philip Stoller and  
5 MartinFrank

6 New York, New York.  
7 October 16, 1974 - 9:30 A.M.

8  
9 (Trial resumed.)

10 (In the robing room.)

11 THE COURT: The defendant Frank has submitted two  
12 requests to charge. Have you seen this?

13 MR. SORKIN: Yes. With respect to Request  
14 No. 43, I don't think that is necessary. I think it is clear  
15 that we are discussing the evidence and it is the jury's  
16 recollection that binds.

17 THE COURT: Let me say as to 43 to that extent  
18 I already planned to charge the jury, but I am not going into  
19 all this detail about D'Onofrio and all this and that. I am  
20 not going to go into that.

21 MR. SORKIN: With respect to 44, your Honor, I  
22 think it is unquestionably misleading because we are not  
23 dealing here with 15 stock certificates that were traded  
24 on the open market. These were certificates. the evidence  
25 shows, that were either mailed or hand-delivered. They

1 weren't in the market. There are specific dates that  
2 have been referred to in the record as to when this stock  
3 either was mailed overseas or hand-delivered overseas.  
4 This is not free trading stock. This was stock that never  
5 went into the market until well after April 15.  
6

7 I think that is clear.

8 THE COURT: Let me say in regard to No. 44, I  
9 certainly will charge the first sentence, but I will not  
10 charge the last because I think it is confusing and would  
11 only serve to avert the jury from the real issues.

12 As to No. 45 --

13 MR. SORKIN: I don't know how many times your  
14 Honor has referred to this. I think it is repetitious, it  
15 is redundant and your Honor has made it clear that the jury  
16 is not to consider any dismissed counts.

17 THE COURT: No. 45 is really something I plan to  
18 charge in any event.

19 MR. FELDSHUH: I wanted to make sure of the last  
20 sentence, your Honor. I am sure it will be charged, but I  
21 wanted to call it to your attention.

22 THE COURT: I think that is really not necessary  
23 surplus although I agree with you. Obviously it seems to  
24 me any group of intelligent people would know that those  
25 counts are gone and the other counts are here and we should

2 forget about that and that is not any of our concern any  
3 longer.

4 MR. FELDSHUH: All right, sir.

5 THE COURT: Which I intend to say, in effect.  
6 So in substance I think I already planned to charge No. 45  
7 not in haec verba, but in substance.

8 That is it until we get our two jurors in and as  
9 I told Mr. Gould, I will tell the jury concerning his absence.

10 MR. ALENSTEIN: Before we break up, Judge, I  
11 have one thing. In view of the fact that your Honor has  
12 turned down I think No. 44 among the supplemental requests  
13 of defendant Frank, I hadn't planned to submit anything in  
14 view of the fact that Mr. Feldshuh has submitted his No. 44,  
15 but since there is a problem about it I do have some requests  
16 in view of Mr. Sorkin's remarks yesterday afternoon.  
17 I wasn't going to submit them until he finished his summation  
18 in case there were any additional things he was going to  
19 request.

20 THE COURT: If you have anything to submit I sug-  
21 gest you submit it.

22 MR. ALENSTEIN: I would have to write out in  
23 longhand.

24 THE COURT: That is all right.

25 MR. ALENSTEIN: I will do that after the summa-

tion is finished, I will hand it up to you.

THE COURT: All right.

(In open court; jury present.)

THE COURT: Good morning, Mrs. DeBartola, ladies and gentlemen.

MR. SORKIN: May I proceed, your Honor?

THE COURT: Just a minute, please.

Ladies and gentlemen, because of the weather one or two of you had difficulty getting in which is properly understandable.

Before we begin let me point out that Mr. Gould is not present with the precise agreement of all of us, including Mr. Stoller, and he is busy in another part of this building this morning, and will be back with us some time during the next half hour. However, Mr. Stoller has agreed that we go ahead with Mr. Alenstein and Mr. Grimes representing him.

All right, Mr. Sorkin.

MR. SORKIN: Thank you, your Honor.

Good morning, ladies and gentlemen.

Ladies and gentlemen, when we left off yesterday I was reporting to you the testimony of a conversation that Miss Herzfeld testified to. I think the last thing that happened was Mr. Gould getting up and saying that was a false-

2 hood, there was no testimony like that.

3 Let me read you the testimony of Miss Herzfeld  
4 at a meeting at Mr. Frank's office. At Page 1118 of the  
5 transcript, the question, and this is the cross-examination  
6 of Miss Herzfeld, ladies and gentlemen, by I believe Mr.  
7 Feldshuh.

8 "Q What did Mr. D'Onofrio say to Mr. Frank in that  
9 meeting at the end of June or the beginning of July 1969,  
10 when you say he introduced himself? What did you hear Mr.  
11 D'Onofrio say?

12 "A He says hello"-- aand I am quoting from the  
13 record "Hello, I am Ray D'Onofrio.

14 "Q He said that to Mr. Frank?

15 "A Yes.

16 "Q What did Mr. Frank say if anything to him when Mr.  
17 D'Onofrio said that?

18 "A Glad to meet you." And I am quoting. That  
19 was Miss Herzfeld's testimony.

20 Mr. Feldshuh argued to you that that was the time,  
21 the first time, he suggested to you that Ray D'Onofrio met  
22 Martin Frank. And he suggested it to you by that conversa-  
23 tion. Well, we suggest to you, ladies and gentlemen,  
24 what do you think Ray D'Onofrio and Martin Frank are going  
25 to say to one another in the presence of a third person who know



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2 nothing about what has taken place in Training With the  
3 Pros?

4 Do you think they are going to start discussing  
5 the SEC investigation? They are going to start discussing  
6 the indication letter in Bank Hofmann? They are going to  
7 start discussing the receipts and Barbin and Pompeii and  
8 Lance and Gypsy and Shirley and Erika?

9 Of course not. Something else Mr. Feldshuh  
10 didn't remind you of when he suggested to you that this was  
11 the first time that Martin Frank met Ray D'Onofrio.

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2 Ask yourselves why didn't he remind you of  
3 William Brief's testimony? William Brief testified before  
4 you that he went to a party at Mr. Stoller's house in  
5 either the summer of 1965, '66 or '67. He said maybe '65,  
6 maybe '66, maybe '67.

7 He didn't quite recall. And who was at that  
8 party says Mr. Brief? Philip Stoller, Jerome Allen,  
9 Martin Frank and Raymon D'Onofrio. Why didn't Mr. Feldshuh  
10 remind you of Mr. Brief's testimony? He suggests to you  
11 that that is the first time that Mr. D'Onofrio met Mr. Frank.  
12 Ask yourselves this: If Mr. Frank is to represent Training  
13 With the Pros what is Mr. D'Onofrio doing up in Mr. Frank's  
14 office? He wasn't an officer. He wasn't a director of  
15 Training With the Pros. What is he doing up there?  
16 On June 20, ladies and gentlemen, Mr. Stoller goes down  
17 to the SEC and he testifies under oath. Then he comes  
18 back and he tells Mr. D'Onofrio that he testified at the SEC  
19 and Mr. D'Onofrio told you what Mr. Stoller said. He  
20 said "Those dumb bastards, they don't know what they are  
21 doing". Evidently Mr. Stoller was referring to Mr. Rich,  
22 Mr. Kelly, Mr. Rashes, Ruth Appleton.

23 Remember a very significant statement on page  
24 21 of Mr. Stoller's SEC testimony which is Exhibit No. 105  
25 in evidence. He says something very significant there

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2 because it can be tied in, we suggest, to the meeting that  
3 takes place at Mr. Frank's office after Mr. Stoller  
4 testified. Mr. Stoller says to the SEC that if his lawyer  
5 knew he was at the SEC he would put his throat. Do you  
6 remember when I read Mr. Stoller's SEC testimony to you?  
7 Mr. Stoller said if his lawyer knew he was down there he  
8 would cut his throat.

9 Now let us go to the meeting in Mr. Frank's office.  
10 What does Mr. Frank do in the presence of Stoller and Allen  
11 and D'Onofrio after Mr. Stoller testifies at the SEC?  
12 He tells Mr. Stoller, according to Mr. D'Onofrio, you lied,  
13 why didn't you keep quiet, why didn't you take the Fifth.  
14 He calls him all sorts of names. Sure he would cut his  
15 throat. Here is Mr. Stoller going down to the SEC and  
16 telling the SEC a phony story we suggest to you about these  
17 receipts and the negotiated transactions with the bank.

18 Ask yourselves if these fellows are such  
19 knowledgeable people in the stock market, as knowledgeable  
20 as Wein, Paruch and Hyman say they are and this stock was  
21 another winner like Franklin Mint, how could they be so  
22 silly to sell their stock to the bank at \$10 a share  
23 when that stock was going up to 50 and 70 in less than a  
24 month?

25 Let us turn to Count 14, ladies and gentlemen,

1 jqbr 3

2 Count 14 of the indictment. Mr. Stoller is charged in

3 Count 14 with making a false statement to the SEC.

4 Count 14 of that indictment Mr. Gould read to you but he  
5 didn't read all of it to you because part of Count 14 also  
6 says, the question put to Mr. Stoller at the SEC:

7 "Q Do you have any nominees who own any stock at  
8 this time, friends?

9 "A That is different again. Friends and nominees  
10 are two different things. I have no financial interest  
11 in a share of Training With the Pros."

12 And Mr. Gould stopped there. We concede that  
13 as of June 20, 1969 Mr. Stoller had no financial interest  
14 in any share of Training With the Pros but the rest  
15 of Mr. Stoller's answers goes like this "Whether people  
16 I know have stock or not, I don't know and couldn't say  
17 nor would I say".

18 Ask yourselves, ladies and gentlemen, did Mr.  
19 Stoller know Mr. Bonavia and did Mr. Stoller know Mr.  
20 Bonavia as of June 20, 1969, and did Mr. Stoller know that  
21 Mr. Bonavia had purchased that stock unknowingly on March  
22 12, 13, 14 of 1969 and 9,100 shares were sitting in  
23 Mr. Bonavia's account as of June 20, 1969? Mr. Stoller  
24 knew that and he told the SEC he didn't know if anyone  
25 had any interest in Training With the Pros at the time.

1 jchr 4

2 Do you remember Mr. Allen testified? Mr. Allen  
3 testified but he slipped on this one. He said Mr. Bonavia  
4 ordered the stock. He said Bonavia ordered the stock.  
5 And who was Bonavia a client of? Jerome Allen and Philip  
6 Stoller.

7 We suggest to you that Mr. Stoller knew very well  
8 that as of June 20, 1969, Mr. Bonavia had that stock in  
9 account Barbin.

10 Let us turn to Count 16. Count 16, where, as  
11 Mr. Gould even concedes, Mr. Stoller is playing a game with  
12 the SEC. He is asked the question: "Mr. Stoller, do  
13 you know if Mr. Allen owns any stock of Training With the  
14 Pros?

15 "A I have no knowledge.

16 "Q Do you know if Mr. D'Onofrio owns or owned at any  
17 time?

18 "A I have no knowledge. I am using the word  
19 knowledge in its absolute sense, you know."

20 Then he goes on to say, playing a game with the  
21 SEC, playing a game as Mr. D'Onofrio testified that Mr.  
22 Stoller said "With those dumb bastards at the SEC," playing  
23 a game, "My favorite course in high school was semantics.  
24 I have no knowledge." Which one of you had semantics  
25 in high school? Which one of you can think back to high

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2 school and when did you last take semantics? Reading, writing,  
3 arithmetic, English, social studies, gym. Semantics?  
4 This was just another game by Mr. Stoller to conceal what  
5 really happened in Training With the Pros.

6 Let us go on now for just a moment while  
7 everything is still fresh in your mind. Let us go on to  
8 the vouchers, ladies and gentlemen, the vouchers that  
9 Mr. Gould made so much of.

10 Those vouchers, and you are welcome to look at  
11 them show two places on there. It shows St. Petersburg,  
12 Florida and it shows Las Vegas, Nevada.

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2 And Mr.D'Onofrio testified that his mother  
3 lives in Florida. Remember Mr. Could asking where is  
4 your Blackstone law degree, and he said it is hanging in his  
5 mother's house, St. Petersburg and Nevada.

6 But Mr. Could didn't read to you the rest of  
7 Mr. D'Onofrio's testimony with respect to whether he was  
8 in Nevada or not.

9 I am going to read it to you. It is page 863  
10 of the transcript.

11 Mr. Could asks:

12 "Q I am going to ask you where you live?

13 "A I live in three places now. My official  
14 residence is Las Vegas. When I come into New York for  
15 the government I can't get a hotel for \$16 a day and I have  
16 tried all over New York City and I live in my mother's  
17 old apartment, 312 Linton Avenue.

18 "Q What is the third place? I don't care about  
19 the address.

20 "A After I leave Nevada and complete my work" --  
21 remember in response to Judge Tyler's question, right in  
22 the beginning of Mr. D;Onofrio's cross examination, he asked  
23 about Galco. He works in Las Vegas. Remember Galco. They  
24 are in Training, Emission Standard Systems that they already  
25 sold to STP. He works in Las Vegas. That has been



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2 uncontradicted.

3 "After I leave Nevada and complete my work", says  
4 Mr. D'Onofrio, "I usually spend the time with my son and  
5 former wife that I am reconciling with in Denver, Colorado.

6 "Q You have three places of residence?

7 "A Yes.

8 "Q Your official residence is in La Vegas?

9 "A Yes.

10 "Q You have an apartment there?

11 "A I have a room.

12 "Q You have a room?

13 "A Yes, sir.

14 "Q Is that the room at 4507 Buckeye Avenue?

15 "A I have a room in the home of my secretary and  
16 her husband.

17 "Q Is that a Mr. Roister?

18 "A Yes, sir.

19 "Q Mr. Roister's wife is your secretary?

20 "A In my company, Galco Leasing Systems, the  
21 company I work for." That was never reminded. You  
22 were never reminded of that when Mr. Gould summed up yester-  
23 day.

24 "Q Do you know Mr. Roister?

25 "A I have met him.

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2 "A No.

3 "Q Have you ever been in the room at 4507 Buckeye  
4 Avenue?

5 "A Yes, sir.

6 "Q How many times?

7 "A ONce, sir."

8 If Mr. D'Onofrio was going to lie, why did he  
9 just say once and open the door to this whole nasty business?  
10 He said once.

11 "Q You signed a lease there?

12 "A No, sir. I signed a lease at the lawyer's office.  
13 I don't like to interrupt their way of living. They are  
14 living in the apartment and I usually try to stay at hotels  
15 when I am there."

16 That was not read to you yesterday.

17 "Q As I understand it, you have told people that  
18 you live in Las Vegas?

19 "A I do, sir.

20 "Q In the last two years how many times have you  
21 been in Las Vegas?

22 "A Oh, God, 35, 40 times.

23 "Q Where do you live in Las Vegas?

24 "A I stay in hotels. I stay at the union. When  
25 they are not there, I don't like to disturb them because

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2 it is in the confines of husband and wife. You know,  
3 being a criminal" -- he was interrupted.

4 "Q What did you rent the room for?

5 "A 30 some odd dollars a month.

6 "Q Why did you rent by the month?

7 "A Because I work out there.

8 "Q You never used the room, did you?

9 "A Yes, sir.

10 "Q How many times?

11 "A I told you at least once or twice, but I don't  
12 live in a hotel. I couldn't afford it.

13 "Q When you put in your expense vouchers for  
14 the government, what did you show as your residence?

15 "A Las Vegas.

16 "Q You get paid mileage?

17 "A Yes, sir, and I go there.

18 "Q The times you put in a voucher, you say you went  
19 back to Las Vegas?

20 "A In every case I do, sir.

21 "Q You go back to Las Vegas?

22 "A Yes, sir.

23 "Q But you don't stay at the only residence you have  
24 there which is at 4507 Buckeye Avenue?

25 "A At lot of times I stay with my partner, a lawyer

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2 named John Span in his trailer out at the tennis courts.  
3 I live with him. He is a bachelor and sometimes I go into  
4 hotels and sometimes I stay with my cousin at his apartment,  
5 but I spend very little time confining in what I would  
6 call a cell in the apartment I rent".

7 That was never read to you yesterday, ladies  
8 and gentlemen.

9 Remember Mr. Gould in his summation yesterday?  
10 He said that Bonavia was afraid because Mr. D'Onofrio was  
11 going to beat him up and he stopped there.

12 Why weren't you reminded yesterday that it was  
13 more than Mr. D'Onofrio just beating up on Mr. Bonavia?  
14 It was Mr. Stoller telling Mr. D'Onofrio that he for \$15,000  
15 can have someone with a truck run Bonavia over if he  
16 testified before the grand jury.

17 Why weren't you reminded that Mr. Bonavia was told  
18 by Mr. Stoller that he wouldn't leave New York alive if he  
19 mentioned them or Swiss banks or Training With the Pros  
20 in the grand jury? Why weren't you told yesterday that  
21 at the Biltmore in 1972 when Mr. Stoller met Mr. Bonavia  
22 there, Mr. Stoller told him "We have had enough trouble  
23 with you and if we don't get you, we are going to get  
24 your son".

25 Remember the words that Mr. Bonavia testified

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2 || to?

8 At one of those meetings, ladies and gentlemen,  
9 either a couple of weeks before he testified on December  
10 11, 1969 or the morning that he testified before he went  
11 in the grand jury, there's a telephone conversation.  
12 Remember Mr. Stoller tells Mr. Bonavia's going to call up  
13 Martin Frank? And Mr. Stoller gets on the phone,  
14 according to Mr. Bonavia, and all Mr. Bonavia hears is  
15 Mr. Stoller saying that Joseph Bonavia is not going to take  
16 the Fifth.

23 On cross examination Mr. Feldshuh got up  
24 there and he asked Mr. Bonavia "Are you sure it was the  
25 word us?"

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2                   And remember what Mr. Bonavia said?

3       Mr. Bonavia said that the word us rang a bell because he  
4       didn't know then, nor does he know now, unlike you,  
5       whether Mr. Frank had an account at Bank Hofmann.

6                   If Mr. Bonavia was going to lie, why didn't he  
7       come right out and say, oh, sure, I heard Mr. Frank  
8       mention Lance at Bank Hofmann? But Mr. Bonavia didn't?  
9       The only thing that stuck in his head was the word us.

10                  Mr. Feldshuh could not shake him from that word  
11       us on cross examination.

12                  Ask yourselves, ladies and gentlemen, whv should  
13       Mr. Martin Frank be worried about us?

14                  After Mr. Bonavia went before the grand jurv  
15       where did he go? Of all places, Mr. Frank's office.

16                  What does Mr. Frank ask him? He wants to know  
17       what Mr. Bonavia said to the grand jury. And he tells --  
18       he asks Mr. Bonavia, "You didn't involve us in any Swiss  
19       Bank"?

20                  And Mr. Bonavia says, "No".

21                  Mr. Bonavia came in here and told you he lied  
22       on December 11, 1969.

23                  What does Mr. Frank say? "Stick with Philip  
24       Stoller. He is the best stock promoter in New York, stay  
25       with him and you will get your money back. Freddy Herbert

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2 is going to be president of Bank Hofmann and then we are  
3 all going to make money".

4 Then they go to Mr. D'Onofrio's office, and  
5 what does Mr. Stoller say to Mr. Bonavia in the car on  
6 the way to Mr. D'Onofrio's office?

7 "Use Marty Frank as your lawyer".

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When Mr. Bonavia meets Mr. D'Onofrio, he says, "I don't want to use Marty Frank." Both Mr. D'Onofrio and Mr. Bonavia testified that Mr. D'Onofrio got through his relationship with Mr. D'Onofrio's lawyer, Steven Duke, got Mr. Bonavia a fellow by the name of Patrick Wall, and Mr. Bonavia mentioned his name and Mr. D'Onofrio mentioned his name.

They meet with Mr. D'Onofrio, and something very significant happens, significant only with respect to the type of corroboration we demand you look for in this case. In the conversation with Mr. D'Onofrio and Mr. Stoller and Mr. Allen and Mr. Bonavia, D'Onofrio says "Training With the Pros will be sold to Fuqua Industries."

Now, Mrs. DeBartola and ladies and gentlemen, where in this case did you hear Fuqua Industries before? Think, think for the corroboration. Where did you hear Fuqua Industries?

Remember Nathan Hyman took the stand, and Nat Hyman, broker, little fellow who had been in the business 40 years, who Mr. Gould obviously was very for of -- Mr. Hyman testified that he had a conversation with Mr. Stoller almost a year after he was interested in Training With the Pros.

What is the conversation? In substance the

1 qb-2

2 conversation is Mr. Stoller telling Mr. Hyman that Fuqua  
3 Industries is interested in Training With the Pros.

4 What a coincidence. D'Onofrio mentions Fuqua  
5 Industries to Mr. Bonavia in the presence of Stoller and  
6 Allen and nearly a year later Mr. Stoller mentions Fuqua  
7 Industries to Mr. Hyman. And they suggest to you, the defense  
8 suggests to you that nothing happened here.

9 Well, there are a number of meetings, ladies  
10 and gentlemen, with Mr. Bonavia and Mr. Stoller and Mr. Stoller  
11 saying, "We have got your records, your transcripts and we  
12 know what is happening in your account," and Mr. Bonavia  
13 saying, "I don't know what is happening. I haven't got my  
14 records, I haven't gotten my records."

15 Did anybody shake Mr. Bonavia when he testified on  
16 the stand that it wasn't until March 1972 through the services  
17 of Dr. Stucki, the Swiss lawyer, that he obtained his record  
18 from Bank Hofmann? That is what he testified to, not until  
19 March 1972.

20 I said I was going to get back to Joseph Pfingst,  
21 ladies and gentlemen.

22 Let me just get back to him as distasteful as it  
23 may be for just a moment.

24 Joseph Pfingst, ladies and gentlemen. Joseph  
25 Pfingst is the "no" man. Joseph Pfingst is the

1 qb-3

2 man who when confronted with anything that D'Onofrio said,  
3 we suggest to you "Come in here and say no, that is not true,  
4 it didn't happen."

5 Joseph Pfingst, a man who just got out of jail  
6 for bankruptcy fraud, a man who testified on the witness  
7 stand that it was a one-witness case. Even the Judge said  
8 so, says Mr. Pfingst, the Judge at his trial.

9 Ask yourselves, who for the rest of his life will  
10 Joseph Pfingst blame for having gone to jail and having been  
11 convicted in the United States District Court in the Eastern  
12 District of New York for bankruptcy fraud? Who is he going  
13 to blame? Ramon D'Onofrio.

14 We submitted to you before and we submit to you  
15 again that Joseph Pfingst would take the stand and if D'Onofrio  
16 testified that Joseph Pfingst's name was Joseph Pfingst, Joseph  
17 Pfingst would take the stand and deny it. Why? Because  
18 it came out of D'Onofrio's lips.

19 So much for Joseph Pfingst. Let's go to December  
20 of '72 or January of '73, just for the moment, to remind you  
21 and then we will move on to, to remind you that D'Onofrio  
22 testified that he heard Frank and Stoller and Herbert at Bank  
23 Hofmann in around December '72 or January '73, and then we  
24 have Mr. Frank's passport showing the stamp, December 13,  
25 1972, at Zurich airport.

1 qb-4

2 I am sorry if I am repetitious, ladies and  
3 gentlemen, but some of this stuff must be covered again  
4 because of the break and I will try to move on for you.

5 The Government has conceded, ladies and gentlemen,  
6 that Mr. Frank -- at least there is no proof that Mr. Frank  
7 got \$15,000 in this case for having told Mr. Stoller and  
8 Mr. Allen how to do the deal.

9 But Mr. Feldshuh didn't remind you yesterday  
10 or the day before when he testified that he asked Mr. D'Onofrio  
11 a question on Page 1010 of the transcript.

12 MR. FELDSHUH: I am sure Mr. Sorkin made a mistake.  
13 I did not testify.

14 MR. SORKIN: I am sorry. I meant Mr. Feldshuh  
15 asked Mr. D'Onofrio at Page 1010 of the transcript.

16 Question by Mr. Feldshuh:

17 "Q Did you ever pay \$15,000 to Mr. Frank?

18 "A No, I didn't.

19 "Q Did you ever pay any part of 15,000 to Mr. Frank  
20 in this connection as you have testified?"

21 MR. FELDSHUH: I object, your Honor.

22 THE COURT: I am sorry. He is reading from the  
23 transcript. Objection overruled.

24 MR. SORKIN: I will start again, the question by  
25 Mr. Feldshuh.

1 qb-5

2 "Q Did you ever pay \$15,000 to Mr. Frank?

3 "A No, I didn't."

4 If Mr. D'Onofrio was going to lie, why didn't  
5 he just come out and say he did?

6 "Q Did you ever pay any part of \$15,000 to Mr.  
7 Frank in this connection as you have testified?

8 "A Yes, sir.

9 "Q When did you do that, sir?

10 "A In some settlement in Switzerland I gave Jerry  
11 Allen my \$5,000.

12 "Q I asked when, not how.

13 "A I am sorry. When?

14 "Q Yes.

15 "A Some time after we made the \$900,000 score."

16 That was Page 1010 of the transcript, ladies  
17 and gentlemen.

18 Something else, too, that you must be reminded  
19 of which is also terribly significant, minor, but significant,  
20 minor from the standpoint of just a blurt in the testimony,  
21 and not even the testimony as such, but something that you  
22 certainly can conclude from the testimony.

23 Mr. D'Onofrio testified that it was in April of  
24 1969 that he learned about a crank letter, a crank letter  
25 which apparently had been sent to the SEC, and he learned

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2 it from Mr. Moss who received the letter.

3 That is April of 1969.

4 What does he do? He goes to Mr. Stoller and  
5 he goes to Mr. Allen and they wind up going to who? To  
6 Mr. Frank. To whom? To Mr. Frank. Mr. Frank, always  
7 back to Martin Frank.

8 Well, in May of 1969, well after I suggest to you  
9 Stoller, Allen, D'Onofrio and Frank knew that there was a  
10 problem that the SEC may be getting into this stock, well  
11 after they first learned of this, some seven, actually as  
12 we get to it, four days before Mr. Moss testified, four, five  
13 or six days before Mr. Moss testified, Nathan Hyman calls  
14 Mr. Stoller, and he asks Mr. Stoller, "What is the problem  
15 with the stock? Why is it going down?"

16 I suggest to you, ladies and gentlemen, that at  
17 the time of that conversation Mr. Stoller knew full well that  
18 the SEC was in this investigation.

19 What does Mr. Stoller tell Mr. Hyman?

20 "No reason for the stock to go down, the stock is  
21 still good."

22 Let's look at the chart, the pink sheets, ladies  
23 and gentlemen.

24 MR. FELDSHUH: May I make a correction there.  
25 Mr. Sorkin made another mistake. He said Mr. Frank and I am

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2 sure he meant Mr. Hyman.

3 MR. SORKIN: I think I was accurate. I said  
4 they went to visit Mr. Frank and Mr. Stoller had a conversation  
5 with Mr. Hyman. If I did say Mr. Frank, I apologize.

6 THE COURT: Let's go on.

7 MR. SORKIN: The black line is the low bid,  
8 the red line is the high ask. When does this stock begin to  
9 drop as reflected in the pink sheets? April, April 15, it is  
10 at the high, the very day that Wein and Hyman speak to  
11 Messrs. Allen and Stoller and then towards the end of April  
12 when that crank letter comes in and the SEC begins the investi-  
13 gation going well past this to June 20 when Mr. Stoller testi-  
14 fied, this only goes up to June 12, but look at what is  
15 happening to this.

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2 I suggest to you there was a reason that Mr. Stoller  
3 didn't tell Mr. Hyman and that reason being that the SEC was  
4 looking into the stock.

5 MR. ALENSTEIN: I would like to object to that,  
6 if your Honor please. There is no proof that that was known  
7 to the general public.

8 THE COURT: I didn't suggest or I don't think that  
9 Mr. Sorkin suggests that it was known to the general public,  
10 whatever that may mean.

11 Overruled.

12 MR. SORKIN: Let's move on, ladies and gentlemen. Let's move  
13 on to James Feeney. Mr. Feeney has a conversation with Mr.  
14 D'Onofrio around January of 1969. What does Mr. D'Onofrio  
15 say? Mr. D'Onofrio says according to Mr. Feeney that  
16 he has friends who are going to help him move the price of  
17 the stock up. Friends.

18 Let's go back to Mr. Brief's testimony. Mr. Brief  
19 met them at a party. Mr. D'Onofrio testified that he was  
20 in Mr. Stoller's house. Mr. D'Onofrio testified that he  
21 even went to Mr. Stoller's son's Bar Mitzvah. Mr. Stoller  
22 and Mr. D'Onofrio and Mr. Allen were friends back when  
23 everything was fine and they were in this deal and they were  
24 all splitting \$900,000.

25 You better believe that they were friends.

1 qb-2

2 This terrible man, this horrible human being,  
3 Ramon D'Onofrio, that Mr. Gould characterized yesterday  
4 as the worst sort of animal. Who did he associate with,  
5 ladies and gentleman, back in the late sixties? Who were  
6 his friends? Let's get back to Mr. Feeney.

7 Mr. Feeney testified that he met Stoller, Mr.  
8 Stoller, through a man by the name of Mel Hiller. Remember  
9 Mel Hiller? Mel Hiller is the fellow who put his dark  
10 glasses on when he was here. He was up there for a short  
11 time. The fellow they dredged up to tell about the con-  
12 versation on the court steps. Just a few lines to get  
13 D'Onofrio, and he disappears again, gone forever.

14 You remember Mel Hiller. That is the best they  
15 could do, ladies and gentlemen, Mel Hiller.

16 Mr. Feeney then eventually meets Mr. Stoller and  
17 he meets Mr. Allen at the East 60th Street apartment.  
18 There is no dispute that it was at East 60th Street. And  
19 they have a conversation and the conversation by Mr. Stoller  
20 and Mr. Allen to Mr. D'Onofrio, according to Feeney's testi-  
21 mony is, "Ray, you do your job, we will do ours." And they  
22 tell Mr. Feeney how they are going to do their job. They  
23 are going to get two brokers and they are going to buy and  
24 sell and buy and sell and buy and sell, back and forth to  
25 raise the price of the stock, the same 100 or 200 shares,

trade it back and forth all day to raise the price of that stock.

What brokers did you hear from? You heard from E. F. Henderson, Mel Schneiderman, who was told by Mr. Stoller to go into the pink sheets.

On the airplane going over to Switzerland they have another conversation and at this conversation Mr. Stoller virtually confesses to Mr. Feeney how they did Training With the Pros.

First asking Mr. Feeney if there are any tapes going on. What does he say? He says, "The stock was gathered," and these are the words of Mr. Stoller according to Mr. Feeney's testimony. "The stock was gathered for the benefit of D'Onofrio, Stoller and Allen, and it was put into an omnibus account for the benefit of all and then it was crossed over to Pompeii and Barbin."

And when they arrive in Switzerland they have another conversation. What does Mr. Stoller say? Mr. Stoller says that he transferred his accounts from Bank Hofmann to another Swiss bank. And why? Because he is getting concerned about Raymon D'Onofrio. Ramon D'Onofrio has been talking to the United States Attorney's office back in the United States, and Ramon D'Onofrio is liable to blow the whistle on Bank Hofmann.

1 qb-4

2 I suggest to you that is why Mr. Stoller got  
3 his accounts out of Bank Hofmann back in early 1972 or late  
4 '71, when they went over there.

5 Then we come to a little episode in October of  
6 1973 at the Hotel Nova Park. You remember Mr. Allen testi-  
7 fying? Let's get back to Mr. Allen. Mr. Allen testified  
8 that he went over to Switzerland and he went over there  
9 in October of 1973 on a business trip, and poor Mr. Allen  
10 was arrested by the Swiss on December 2 or December 4, 1973.  
11 I think Mr. Rand said it was December 2. I think Mr. Allen  
12 said it was December 4. It doesn't matter. To hear Mr.  
13 Allen explain it, he had no problems in the United States,  
14 nothing.

15 He went over there on a business trip. Mr. Feeney,  
16 however, told you something quite different. Mr. Feeney  
17 told you that they had a meeting at the Hotel Nova Park and  
18 Allen, according to Mr. Feeney's testimony said he has no  
19 intention of coming back to the United States? Why? He is  
20 a fugitive, and we are going to get to that in a little while  
21 too.

22 Mr. Stoller, he preferred the Bahamas. He didn't  
23 want to stay in Switzerland. They are going to use the  
24 Bahamas as a haven. Nobody was going to talk and on the  
25 way to the airport Mr. Stoller tells Mr. Feeney that the

1 Bahamas would be a pretty good refuge for the indictments  
2 when they came down. But Mr. Fee, ney also mentioned something  
3 else at that meeting, at that meeting at the Hotel Nova  
4 Park.  
5

6 He mentions that there was a code name for the  
7 Bahamas and that code name was mentioned variously as either  
8 Sunshine or the Swimming Pool. Do you remember that?

9 MR. ALLENSTEIN: I object to that, your Honor.

10 THE COURT: Overruled.

11 MR. SORKIN: Sunshine or the Swimming Pool. Remember  
12 he was asked was it Sunshine -- and I think Judge Tyler  
13 asked -- was it Sunshine or Swimming Pool and Mr. Feeney testi-  
14 fied in the first instance it was Sunshine, but because  
15 they had a code name for something else they decided to call  
16 it the Swimming Pool.

17 Why didn't anybody remind you of the conversation  
18 between Mr. Stoller and Mr. Allen on the telephone? On  
19 March 6, 1974, Mr. Allen says, and you can hear these trans-  
20 cripts again if you like, ladies and gentlemen, just as well  
21 as you can see every other exhibit in evidence.

22 What does Mr. Allen say -- and your recollection  
23 binds as to what Mr. Allen said. But let me see if I can  
24 recall it for you.

25 Mr. Allen says, "So what the hell can I do now?"

1 qb-6  
2 I wish the hell I had taken the Swimming Pool. I tried  
3 to set up my mind. I don't know what to do."

4 What does Mr. Stoller say? "I know, Jerry.  
5 Believe me, believe me, I have no anger at all." The  
6 Swimming Pool. Both of them knew what the Swimming Pool  
7 was.

8 We suggest that to you and further on in this  
9 conversation it is also mentioned. Mr. Allen says, "A  
10 lot of this was like the dam bursting. I held off on taking  
11 a plea until I thought of them Sunday or Monday night, I  
12 forget, my mind is such a blank that the attorney -- I can't  
13 mention names on the phone -- would call me about the Swimming  
14 Pool. I was prepared to go, but I didn't hear then. I  
15 figured maybe it was just conversation because I have been  
16 hearing about the Swimming Pool for a month now."

17 Further on in that conversation Mr. Allen says  
18 again looking for refuge from the indictments and the guilty  
19 pleas and the frauds and the manipulations, what does Mr.  
20 Allen say in that conversation, "Well, can a man go to the  
21 Swimming Pool by himself," and Mr. Stoller says, "Anybody can  
22 go swimming by himself." What a very funny conversation to  
23 be talking about. Funny subjects over the telephone in March.  
24 Everybody goes swimming in March, don't they? I suggest  
25 to you that Mr. Stoller and Mr. Allen, their own conversation,

1 qb -7

2 the words out of Mr. Stoller's own mouth in that telephone  
3 conversation corroborates James Feeney 110 per cent  
4 because Mr. Feeney testified that that is exactly what they  
5 were talking about in the Hotel Nova Park in the fall  
6 of 1973.

7  
8  
9 End 3A  
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2 Why weren't you reminded of that conversation  
3 when the defense summed up? There is another conversation  
4 on March 6, 1974. Please don't think because I am picking  
5 out certain parts of these conversations I want to leave out  
6 the entire conversation. You are entitled to hear the entire  
7 conversation. But because of time I can't do it.

8 In that conversation Mr. Allen says "Well,  
9 the only case that" --

10 MR. ALLENSTEIN: If your Honor please, my recol-  
11 lection may be wrong but I think that these conversations  
12 were admitted only as to a count which is now out of the  
13 case and maybe the jury ought to be instructed in this  
14 regard.

15 THE COURT: That is not my recollection. This  
16 particular conversation was left in a limited basis of  
17 knowledge, state of mind on the defendant Stoller, even  
18 though you are quite correct in saying that the ob-  
19 struction of justice counts which this testimony was offered on  
20 were stricken.

21 MR. SORKIN: Mr. Allen says "Well, the only  
22 case that they nolle prossed" or prossed, that is dismissing  
23 of the indictment by the government. The government  
24 dismissed the Blocker case. Do you remember Mr. Allen talk-  
25 ing about the Blocker case? "Well, the only case that is

2 nolle prossed is the Blocker case which really isn't -- and  
3 then Mr. Stoller comes in. Mr. Stoller comes in and says  
4 "Oh, that is crap. That is all old bullshit. But in the  
5 big case, the big T, there is going to be you and Ray, and my  
6 God, if you got a friend like that, no comment called for".  
7 What is Mr. Stoller worried about the big T for, the Big T,  
8 Training With the Pros.

9 And later on in that conversation what does Mr.  
10 Allen say? This is the second conversation that night.  
11 Mr. Allen says "I wish the swimming pool was still available"  
12 and out of Mr. Stoller's own lips, his own words "I wish  
13 it was. Okay, if there is now, I wish it was" says Mr.  
14 Stoller. Why? To get Mr. Allen out of the country  
15 because Mr. Allen was cooperating with the government at the  
16 time and that, I suggest, is what Mr. Stoller was concerned  
17 about. Get Mr. Allen out of the country.

18 Let us turn to Mr. Allen again. Mr. Allen  
19 said he went to Switzerland as a businessman. He wasn't  
20 a fugitive. Well, then, ask yourselves, ladies and gentle-  
21 men, why when he came back he signed an agreement in the  
22 presence of his lawyer, an agreement that said that he is  
23 coming back voluntarily and waiving extradition. Business-  
24 men don't get extradicted, businessmen don't waive extra-  
25 dition, fugitives are extradicted. But Mr. Allen says he

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2 was in Switzerland on business. Something else you also must  
3 remember. Allen said he was exonerated on the Swiss charges  
4 and released on January 14, 1974. According to  
5 Mr. Rand -- and do you remember Mr. Rand from the United  
6 States Embassy in Berne? Allen was released on his own  
7 recognizance on January 14, and on the evening of January 14th  
8 he stayed at one of the best hotels in Geneva by himself,  
9 no one watching him. I suggest to you, ladies and gentlemen,  
10 if Mr. Allen was anxious to come back to the United  
11 States to those terrible people in the U.S. Attorney's  
12 office who threaten and coerce and who threaten to plant  
13 narcotics and all those terrible things, I suggest to you that  
14 he would have run. But on January 15th, accompanied by Mr.  
15 Rand and his lawyer, they go to the airport and he volun-  
16 tarily gets on that airplane and flies right back to the  
17 United States. He chose to come back.

18 Let us talk some more about Mr. Allen because  
19 I suggest to you, ladies and gentlemen, that Allen is the  
20 only defense that they have got and I suggest to you it is  
21 no defense because this case they have submitted to  
22 you must rise or fall on the likes of Jerome Allen. Allen  
23 testified that he spoke to Herzfeld three or four times,  
24 learning about the company, research, spoke to her about the  
25 company's operation. Do you remember what Marilyn

Herzfeld testified to? Marilyn Herzfeld testified that Allen and Stoller came up to Training With the Pros. The first time, amenities, nothing discussed. Is Marilyn Herzfeld lying? And when there was a conversation between Messrs. D'Onofrio, Stoller, Allen and Miss Herzfeld wasn't even present. But Allen told you that he had three or four conversations with her about the company.

And when was the next time Miss Herzfeld testified that she saw Mr. Allen? When he and Mr. Stoller came up there to give her names. What names? The Strizivers and the Ardens and the Mildred Stollers and the Tolanskvs, the nominees for 5,000 shares.

Not 1,000 shares, the guidelines set by the SEC, 5,000 shares for people who were fronts, we suggest to you, for Stoller and Allen and D'Onofrio.

Mr. Allen doesn't remember meeting her and giving her the names.

Do you remember Stoller Exhibit O, the Walter Wirth business that Mr. Gould mentioned to you in his summation yesterday to show you what a liar, as he says, Mr. Bonavia is? Stoller Exhibit O, the letter that says that Walter Wirth told him to open up the account or Walter Wirth suggested that he open the account at Bank Hofmann and get the records to open the account from Walter Wirth.

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2 Ask yourselves, ladies and gentlemen, ask yourselves why did  
3 not Mr. Gould remind you that Mr. Bonavia testified that he  
4 wrote that letter as a favor for Mr. Stoller because Mr.  
5 Stoller didn't want Lieberbaum & Company to know of  
6 his relationship to Bank Hofmann. Do you recall that?  
7 Think about Stoller Exhibit O. You can have the testimony  
8 read back to you.

9 Let us talk about one other thing while we are  
10 talking about Mr. Bonavia. The whole business of the letter  
11 to Mr. Cannariato, do you remember that, where I was accused  
12 by Mr. Gould of sending a false letter to Mr. Cannariato, the  
13 March 24, 1974 letter where in that letter it says  
14 "no independent letter" and in the next breath Mr. Gould  
15 tells you that the only guide the government had back in the  
16 summer of 1973 or the fall of '73 in talking about  
17 Switzerland and Bank Hofmann was D'Onofrio. I suggest to  
18 you, ladies and gentlemen, there is independent evidence  
19 that that letter is proper and it is truthful. That  
20 letter says "independent evidence", not the hearsay of  
21 Mr. D'Onofrio who only met Mr. Bonavia a couple of times  
22 and all Mr. D'Onofrio could say was that he heard that  
23 Mr. Bonavia had an account. Mr. Bonavia wasn't his client,  
24 he was Mr. Stoller's and Mr. Allen's client. Independent  
25 evidence. What type of evidence? When he comes in, ladies

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2 and gentlemen, when he comes in and throws his Swiss bank  
3 records on the desk of the United States Government, that  
4 is independent evidence.

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5 And something else, too, you must remember. There  
6 is something else, too.

7 Remember Mr. Allen testified that we told him  
8 in the summer of 1973 that we had a document that showed  
9 transfer of \$65,000, 32,500 to Mr. Stoller and 32,500 to  
10 Mr. Allen. We told him about it and we showed him a document.  
11 We did a lot of things with him in the summer of 1973.

12 Ladies and gentlemen, it is undisputed that the  
13 government didn't get those records and didn't know about  
14 any such transfer until after October 1973 when Mr. Bonavia  
15 brought his records in.

16 How could the government have possibly known  
17 that any such document even existed? Because Mr.  
18 Bonavia's subpoena, which didn't call for Swiss bank records,  
19 all it called for was evidence of transactions in Training  
20 With the Pros, not statements like this. How could the  
21 government possibly know of such a statement? Why don't  
22 you pass that around and look at it again.

23 I will only be a bit longer, your Honor, 15  
24 minutes.

25 What did Mr. Bonavia testify to? Mr. Bonavia



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2 testified that between '67 and '70 he heard repeatedly those  
3 names which should be on your mind, shouldn't leave your  
4 mind, should never leave your mind, Shirley, Erika, Gypsy,  
5 Pompeii. If Mr. Bonavia was going to lie, ladies and  
6 gentlemen, why didn't he just come in here and say he also  
7 heard Lance? Mr. Bonavia didn't know then and he doesn't  
8 know now, unlike you, that Mr. Frank had an account at  
9 Bank Hofmann.

10 Something else, too, ladies and gentlemen.  
11 Remember Stoller Exhibit G, the letter that Mr. D'Onofrio sends  
12 to Mr. Frank which mentions Fleetwood and Drummer? Fleetwood  
13 and Drummer, the Lichtenstein corporation, the Lichtenstein  
14 corporation.

15 Ask yourselves, if Mr. Frank really doesn't  
16 know what is going on, how come Mr. D'Onofrio sends that  
17 letter to Mr. Frank and not to Philip Stoller? To Mr. Frank,  
18 not to Philip Stoller, to Martin Frank, where he mentions  
19 Fleetwood and Drummer.

20 How would anybody in the world, anyone of you  
21 know, getting a letter, any letter, saying I want to talk  
22 about Fleetwood and Drummer -- which Drummer, Gene Krupa?  
23 Which Fleetwood, the Cadillac? How would anyone know  
24 what Fleetwood and Drummer really meant. Mr. Frank knew and  
25 that is why Mr. D'Onofrio sent that letter to Mr. Frank



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2 which they introduced.

3 Did Mr. D'Onofrio deny he sent the letter?

4 No, he didn't.

5 That is one significant conversation, ladies  
6 and gentlemen, which must be pointed out to you, which  
7 again ties everything all together, all the exhibits, all  
8 the witnesses, which really tells you what happened in this  
9 case.

10 Bonavia goes to Mr. Stoller in about March  
11 or February of 1969. He says to Mr. Stoller "I don't  
12 want the stock. I don't want the stock."

13 Mr. Stoller, what does he tell him? He tells  
14 him he took the stock and he had it hidden in foreign  
15 corporations, in his mother-in-law's names, in his  
16 mother's name, in his wife's name and in friend's names.

17 That is what Mr. Stoller told Mr. Bonavia  
18 according to Mr. Bonavia's testimony, and that is the crux  
19 of this case. That is the bottom line.

20 D'Onofrio, Stoller and Allen, unknown to the  
21 SEC, used these names, these fronts to take nearly 15,000  
22 shares out of a total issue of 42,000 shares right out of the  
23 market, thin out the stock because you heard Wein and Hyman  
24 say what a thin market will do.

25 Well, they took that stock, they thinned out

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2 the market.

3 1521 of the transcript, ladies and gentlemen,  
4 at the bottom of 1520.

5 "Q Tell us what else he said, if anything?"

6 Mr. Stoller talking to Mr. Bonavia.

7 "A Then he said he was glad that I didn't buy any  
8 of the issue when the stock went public, that he took it and  
9 he had it hidden in foreign corporations and in his  
10 mother-in-law's name, his wife's name and various friends'  
11 names."

12 He had it hidden. That is what this case is  
13 all about, ladies and gentlemen.

14 Was that ever disclosed to anyone at any time?  
15 The answers we suggest to you based upon the evidence is  
16 absolutely not. This was a fraud of incredible proportions,  
17 perpetrated under the guidance of Martin Frank by Messrs.  
18 Stoller, Allen and D'Onofrio.

19 Let us look, ladies and gentlemen, very  
20 briefly, because I only have a few more minutes left, at  
21 the defense in this case, if that is what you want to call  
22 it.

23 That is absolutely no question in anybody's  
24 minds in this courtroom and there should be none in yours,  
25 and we said it to you in our opening statement, that

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2 Ramon D'Onofrio is a criminal, he is a swindler, he is a  
3 felon, he was convicted on a plea of guilty to bankruptcy  
4 fraud and he pleaded guilty to four indictments in this  
5 courthouse, no question about it.

6 But then ask yourselves, ladies and gentlemen,  
7 who in 1969 was associated with Mr. D'Onofrio? Who was  
8 engaged in the Training With the Pros deal?

9 MR. ALNSTEIN: Objection, your Honor. I don't  
10 think it is proper argument.

11 THE COURT: I will have something to say on  
12 association and friendship in my charge, of course. I think  
13 it is fair argument because I don't think it is finished.

14 Go ahead.

15 MR. SORKIN: Who did he associate with in the  
16 Training With the Pros deal? Who did he attend a party  
17 with? Who did he talk to? Who sent him to Elinor Wein  
18 and Walter Paruch to open up a commodities account?  
19 Mr. Stoller and Mr. Allen.

20 This terrible stock manipulator, Ray D'Onofrio,  
21 he told you what he did, he told you what he owed and he  
22 told you how he made his money. He told you he lied to the  
23 SEC back in 1970. Who did he lie to back at the SEC back in  
24 1970? Who was at the SEC in 1970? An SEC attorney named  
25 Ira Sorkin, Mr. D'Onofrio's old enemy.

2 Well, ladies and gentlemen, this office indicted  
3 -- a grand jury indicted Ray D'Onofrio on four indictments  
4 and he had pleaded guilty to them.

5 But according to Mr. D'Onofrio, there even came  
6 a point in his life, a point in his life after realizing that  
7 he had an epileptic daughter, that he had a widowed mother,  
8 that he had a wife who left him because of his activities,  
9 that he had children to care for and he had a sister who  
10 was abandoned with children -- even in Ramon D'Onofrio's mind  
11 there came a point in time where he had to turn. What  
12 did it? An accumulation of a lot of things.

13 Remember Mr. Gould yesterday telling you about  
14 the famous Morvillo memo and waiving that Morvillo memo in  
15 front of you? And I suggest to you, ladies and gentlemen,  
16 he was implying to you that that is what Mr. D'Onofrio  
17 asked for and got from Mr. Morvillo and Mr. Brodsky.

18 Why didn't Mr. Gould in his summation read to  
19 you from the agreement made in the Pentonville jail in  
20 England in the presence of Mr. D'Onofrio, Mr. D'Onofrio's  
21 British lawyer, Mr. Brodsky and Mr. Green? What was he  
22 hiding from you? I suggest to you, ladies and gentlemen,  
23 that Mr. D'Onofrio's understanding with this office and,  
24 indeed, with the United States Government is not the  
25 Morvillo memorandum because you heard testimony from

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2 Mr. D'Onofrio that when he asked for those things he was  
3 laughed at.

4 At the end of that memo, ladies and gentlemen,  
5 D'Onofrio says he wishes them luck in trying to catch him.  
6 He was caught. They made an agreement: You take that  
7 Pentonville agreement in with you in the jury room and  
8 you see what Mr. D'Onofrio's understanding is with the  
9 United States Government, not the Morvillo memorandum which  
10 the defense tried to shove on you and indicate to you  
11 that's what he's got, no, ladies and gentlemen, it is the  
12 Pentonville agreement.

13 Do you think for one moment, for one moment  
14 that Mr. D'Onofrio, who is waiting to be sentenced in this  
15 court house by a colleague of Judge Tyler, knowing that the  
16 government has indicated to him that we were going to speak  
17 to Judge Tyler who would decide whether or not to speak to  
18 the sentencing judge, knowing all those things, Mr. D'Onofrio  
19 is going to take the witness stand and lie, after everything  
20 that has happened, waiting to be sentenced by a United States  
21 Federal Judge?

22 Remember what Mr. D'Onofrio said, it was very  
23 significant. He said it I think in response to one of Mr.  
24 Gould's questions. He said if he perjures himself it is  
25 more than perjury, he is completely wiped out.

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2 Read that Pentonville agreement, ladies and  
3 gentlemen.

4 Take it in the narrative statement of Mr. D'Onofrio  
5 in November of 1973, take in the other government's exhibits.

6 The defense in this case, ladies and gentlemen,  
7 in a nut shell, in a nutshell is Jerome Allen, Jerome Allen.  
8 That's it.

9 If any of you think, and I told you this from  
10 the opening, if any of you think for one moment that any repre-  
11 sentative of this office, and I have been fingered by the de-  
12 fense, and Mr. Doonan was thrown in there because he hap-  
13 pens to be working on this case -- if any of you think  
14 for one moment that I or anybody from this office told  
15 Jerome Allen to go before Judge Tyler, to go before Judge  
16 Gurfein and lie, and lie for 8 months and Jerome Allen  
17 never once going to Paul Curran, the United States Attorney,  
18 never once mentioned it to his lawyer, never once mentioning  
19 it to any other Assistant U.S. Attorney who he spoke to,  
20 if you please --

21 MR. ALLENSTEIN: He testified he did mention  
22 it to his lawyer.

23 THE COURT: You may be right.

24 Again continue your argument.

25 MR. SORKIN: -- and that his lawyer never went

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2 into the U.S. Attorney -- you remember Mr. Bredman, an  
3 honorable man who testified -- if you think for one minute  
4 that we did any of this to Jerome Allen, then you acquit  
5 these defendants, you let them go. Because we submit to  
6 you justice shouldn't work that way. Under no circumstances  
7 should it work that way.

8 But if you find, ladies and gentlemen, that  
9 Jerome Allen is a liar and he took the witness stand to help  
10 what Mr. Gould calls his brother, Philip Stoller, his brother  
11 after all these years, and Mr. Arden took the witness stand  
12 to help a man who he called a man like his son -- if you  
13 think Mr. Allen did that, then you have got to turn to  
14 the testimony of D'Onofrio, Brief, Rand, Feeney, Bonavia,  
15 Herzfeld. You have to turn to the testimony of every govern-  
16 ment witness, Slavinski, Gray, Doonan. You have got to  
17 take every single document in evidence, and if you do  
18 you are going to find beyond any reasonable doubt that these  
19 defendants are guilty as charged, that they have committed  
20 the crimes charged here.

21 Thank you, Mrs. DeBartelo. Thank you, your  
22 Honor.



2 THE COURT: Ladies and gentlemen of the jury,  
3 we will take a recess at this point and then when we return,  
4 I will commence my instructions in this case.

5 (Jury absent.)

6 THE COURT: All right. Gentlemen, Mr. Alenstein,  
7 you had some requests.

8 MR. ALENSTEIN: Yes, I do, your Honor. I only  
9 have one copy. I will show them to Mr. Sorkin to read  
10 and then I will hand it up to you.

11 (Pause.)

12 MR. SORKIN: Why don't you give a copy to the Judge?

13 MR. ALENSTEIN: All right.

14 (Pause.)

15 THE COURT: Gentlemen, I am mindful of both of  
16 these requests, but they seem so remote from the real contro-  
17 versy.

18 Second of all, and very importantly, I ask you  
19 to remember that yesterday when an objection was made at the  
20 point when this issue came up in the summation of Mr. Sorkin,  
21 I observed myself in response to Mr. Gould that as far  
22 as these two requests go, in effect, there is nothing  
23 illegal, and I said as much to Mr. Sorkin and I believe the  
24 record will bear me out.

25 Why we should clutter up the jury charge with

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2 matters like this which are so unimportant and so insignificant  
3 either to the prosecution or to the defense, I don't quite  
4 understand.

5 MR. ALLENSTEIN: If your Honor please, I would  
6 have thought that they had nothing to do with the case either,  
7 that the issues to which these requests address themselves  
8 have nothing to do with the case.

9 Unfortunately, your Honor, from our point of view,  
10 and I don't even know if this can cure it, but Mr. Sorkin  
11 made a tremendous point about this which is something we never  
12 expected, about the fact that there was something sinister  
13 about the certificates being dated one day and the bills  
14 of sale being dated another day, something sinister about  
15 the stock being sold before the people had possession.

16 THE COURT: That may be, but, you see, your  
17 own words belie your request in my judgment. He was making  
18 part of a mosaic, as I understand it.

19 What do you say to this?

20 MR. SORKIN: Your Honor, again I think it is so  
21 remote as to be incredible. We are not talking here about  
22 free trading stock, stock being sold from Merrill Lynch to  
23 Bache. We are talking about Mr. Allen's testimony. As  
24 soon as his people got the certificates, he went to them,  
25 picked up the certificates, either mailed them or went to

1 gab-3

2 Mr.Stoller. This 14,900, your Honor, no proof whatsoever  
3 that it ever went into the market --

4 MR. ALENSTEIN: There is no claim it did.

5 MR. SORKIN: -- in February, in March or in  
6 April. There is no proof whatsoever. That stock could have  
7 been any piece of paper, your Honor. It was hand-delivered  
8 or it was mailed.

9 This charge, your Honor, we submit goes to free  
10 trading stock where a broker has seven days until settlement  
11 date between the trade date and the settlement date, and  
12 he pays for the stock before he gets delivery of the stock.

13 MR. ALENSTEIN: There is nothing about brokers  
14 or trading in those requests, your Honor.

15 MR. SORKIN: That is what it implies.

16 - THE COURT: I sympathize with this additional  
17 point made by Government counsel, but, in any event, I  
18 refuse to charge these matters as you submit, supplementals  
19 1 and 2.

20 All right. Anything else?

21 MR. FELDSHUH: Yes, I have something, your Honor.

22 THE COURT: All right, what is it?

23 MR. FELDSHUH: I respectfully move for a dismissal  
24 of Count 1 against the defendant Frank for this reason:

25 It is plain --

1 gab-4

2 THE COURT: I already heard you on the motions  
3 at the end of the case and I have denied this motion.

4 MR. FELDSHUH: I am basing this upon the summation  
5 and your Honor's ruling with respect to means subparagraph (r).

6 It is plain, your Honor, that that paragraph  
7 was dismissed with the consent of the Government.

8 THE COURT: That is correct.

9 MR. FELDSHUH: And when Mr. Sorkin in his summa-  
10 tion made reference over my objection, your Honor, to Mr.  
11 Allen's conversation with Mr. D'Onofrio with respect to the  
12 alleged \$5000, that had only one purpose and that was to  
13 show that Mr. Frank did have a --

14 THE COURT: No, Mr. Feldshuh. I disagree with  
15 you most earnestly and completely, with all due respect,  
16 and we have covered that before, I am pretty sure. Though  
17 subdivision (r) was stricken on the consent of the United  
18 States and though Mr. Sorkin this morning conceded it to  
19 the jury that the Government has not proved that Martin  
20 Frank has ever received \$15,000 or any part thereof, that  
21 overlooks what is involved in Count 1 in my judgment, and  
22 that was an agreement and that was fair argument on that basis  
23 made by the prosecution.

24 Your motion is unequivocally denied.

25 MR. FELDSHUH: Thank you, sir. I will stand on

1 gab-5

2 the record.

3 THE COURT: Right.

4 MR. ALENSTEIN: If your Honor please, I have  
5 two motions to make. I won't take up a great deal of time.

6 The first is a motion for a mistrial on the  
7 basis of the prosecutor's summation, on the basis of what we  
8 consider to be a good deal, an enormous amount of unfair and  
9 improper argument. I won't recite --

10 THE COURT: That motion is denied.

11 MR. ALENSTEIN: If your Honor please, I just  
12 want to make certain reference in that motion not only to  
13 all the matters that were objected to, but principally to the  
14 suggestion, and I think it is clearly in there, that because  
15 Ramon D'Onofrio is a criminal, an evil man, a stock manipu-  
16 lator and a perjurer and because he associated with these  
17 defendants, therefore, they are too. I think that was  
18 improper.

19 THE COURT: No, I disagree and I also point out  
20 as I have pointed out to you already this morning that I  
21 specifically intend to charge the jury on this point, the  
22 traditional charge that mere association or friendship is  
23 far from proof of any crime such as conspiracy in this court.  
24 Any motion for a mistrial on this point is ill-conceived and  
25 is denied.

1 gab-6

2 MR. ALENSTEIN: Thank you.

3 I have one further motion, your Honor, and that  
4 is addressed to Count 14 of the indictment. I am not  
5 rehashing things that have already been said. This is based  
6 upon something that Mr. Sorkin said in his summation and  
7 which clarifies things for us somewhat.

8 One of the sentences in the testimony complained  
9 of in Count 14 is that Mr. Stoller testified that as of June  
10 20th he had no interest in a share of Training with the Pros  
11 stock.

12 Now, it is now clear to us for the first time that  
13 the Government does not claim that that was false. So what  
14 we are left with is -- the only thing that the Government

15 THE COURT: I am sorry. I better look at this.  
16 Incidentally, we have lost a great deal of time this morning.  
17 Poor Mr. Gould, through no fault of his, I am sure, is still  
18 not back. I don't propose to start my charge until he is  
19 back.

20 Could I ask that Mr. Grimes take a chance of look-  
21 ing for him in the appellate court. I don't understand  
22 what is going on. We really ought to get him back if we can.

23 I am sorry, Mr. Alenstein. Let me just look at 14.  
24 What sentence is it or what answer in that count that you  
25 are now alluding to?

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2 MR. ALENSTEIN: I think it is in the first para-  
3 graph and the second paragraph of testimony recited in  
4 Count 14.

5 MR. SORKIN: The second sentence, your Honor.  
6 The answer is "That is different, again, friends and nominees  
7 are two different things."

8 MR. ALENSTEIN: Let me make the arguments if  
9 you don't mind.

10 THE COURT: Fine.

11 MR. SORKIN: I am trying to help the Court, Mr.  
12 Alenstein.

13 MR. ALENSTEIN: I am referring, if your Honor  
14 please, to Page 20 of the indictment --

15 THE COURT: Right.

16 -- MR. ALENSTEIN: -- and particularly the last  
17 paragraph on the page. The paragraph in toto is -- your  
18 Honor has it in front of you. I don't have to read it.

19 THE COURT: Yes, and I don't see your point.

20 MR. ALENSTEIN: Mr. Sorkin has now told us that  
21 the following sentence is not claimed to be false.

22 "I have no financial interest in a share of  
23 Training With the Pros."

24 THE COURT: If he did tell us that, I missed it.

25 MR. SORKIN: Your Honor, I will agree with Mr.



1 gab-8

2 Alenstein. However, the next sentence is what we do claim  
3 to be false.

4 MR. ALENSTEIN: That is what I wanted to address  
5 myself to, your Honor.

6 MR. SORKIN: "Whether people I know have stock  
7 or not, I don't know, and I couldn't say."

8 We argued he knew full well Mr. Bonavia had the  
9 stock on June 20.

10 MR. ALENSTEIN: Could I be heard on that?

11 THE COURT: Yes, sir.

12 MR. ALENSTEIN: Mr. Sorkin pointed to the testi-  
13 mony of Mr. Bonavia which, if believed, would perhaps support  
14 the proposition that in March of 1969 Mr. Stoller knew that  
15 Bonavia had stock. This testimony was given on June 20  
16 of 1969, and I don't think there is evidence which could  
17 support a conviction for that last sentence being false.

18 THE COURT: I disagree. I am sorry, but I flatly  
19 disagree. I am not just thinking of Joseph Bonavia,  
20 by the bye. I am thinking of a host of other people. A host  
21 is an exaggeration, forgive me. There are certain other  
22 people in the context of this case which the jury could  
23 perfectly properly in my judgment conclude that Stoller knew  
24 full well had some Training With the Pros, and I think that  
25 is the Government's argument.

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2 Maybe Sorkin put it a different way. I don't  
3 recall.

4 MR. ALENSTEIN: Let me make the final point and  
5 I will be finished, your Honor.

6 I address myself, your Honor, in Count 14, and  
7 also in Count 16 to the word "no." Regardless of what a per-  
8 son says, it is quite clear that Mr. Stoller when he talks  
9 about knowledge, he means actual direct knowledge and not what  
10 he has heard --

11 THE COURT: You made that argument. I don't  
12 blame you for that. That is not my function. My function  
13 is the Judge is not to determine the facts here. A jury  
14 could perfectly properly buy that argument which has been  
15 to them. I don't question that. That is old hat, I am  
16 sorry.

17 MR. ALENSTEIN: Your Honor denies the motion?

18 THE COURT: I really don't understand your  
19 motion yet.

20 Is your motion to direct an acquittal on Counts  
21 14 and 16?

22 MR. ALENSTEIN: Yes, that is what it is, your  
23 Honor.

24 THE COURT: And that is all it is?

25 MR. ALENSTEIN: Your Honor has already denied my

1 gab-10

2 previous motion which was for a mistrial based on the summa-  
3 tion.

4 THE COURT: I know. I am saying in regard to  
5 what we have just been discussing, your motion is for a  
6 directed acquittal of Counts 14 and 16 and nothing else in  
7 that regard?

8 MR. ALLENSTEIN: That is right.

9 THE COURT: All right. If that is what you mean,  
10 I will deny the motion.

11 Please let me know as soon as Mr. Grimes returns.  
12 This day is fast going away and we should have been well on  
13 or better advanced than we are, through no fault of yours, I  
14 am sure.

15 (Recess.)

End 4B

(In open court; jury absent.)

THE COURT: Gentlemen, we have lost a great deal of time for various reasons this morning, but I want to make certain.

Are we ready to go or are we not?

MR. SORKIN: The Government is ready, your Honor.

MR. GOULD: We are ready, your Honor, and I am very grateful for this unavoidable problem.

THE COURT: I wasn't referring to you. We have had other problems that you didn't know about.

Incidentally, Mr. Sorkin, would you be good enough to tell me, do you have a clean copy of the indictment?

MR. SORKIN: We certainly do. Mr. Gould pointed this out, if I may approach the bench --

THE COURT: Yes.

MR. SORKIN: What we have to do, your Honor, is take out 11 through 16. We didn't want to change the head, but we did leave in 14 and 16. If your Honor wants to, we can change this to Counts 14 and 16. We just didn't want to go ahead and change the heading.

MR. GOULD: It is the caption I objected to. I think it would be confusing.

1 qb-2

2 MR. FELDSHUH: We have a clean copy.

3 MR. SORKIN: I think I have served all counsel  
4 with clean copies.

5 THE COURT: I am writing 14 and 16.

6 MR. GOULD: Thank you, your Honor.

7 MR. FELDSHUH: Judge, I just want to put on the  
8 record that I now move for a mistrial based upon your Honor's  
9 ruling with respect to subparagraph (r) and my objection  
10 to it and also with respect to the denial by your Honor of  
11 my motion for dismissal of Count 1.

12 And the fact that the Government --

13 THE COURT: I thought you already made these  
14 motions.

15 MR. FELDSHUH: I hadn't made that particular  
16 motion. --

17 THE COURT: You mean the mistrial, all right.  
18 That motion is respectfully denied.

19 MR. FELDSHUH: It is also respectfully  
20 made, your Honor.

21 THE COURT: I am sure.

22 (In open court; jury present.)  
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UNITED STATES OF AMERICA

vs.

74 CRIM. 150

PHILIP STOLLER and  
MARTIN FRANK

Before: HON. HAROLD R. TYLER, Jr.,  
District Judge  
and a Jury

New York, October 16, 17, 1974

## CHARGE OF THE COURT:

(Tyler, D.J.)

Mrs. DeBartola, and ladies and gentlemen, as you approach this highly important task of citizenship, please remember that it is your sworn duty to weigh the evidence calmly and dispassionately without sympathy or prejudice for or against the Government or the defendants on trial.

Our system of jurisprudence, as I think you all know, defines the duties of the Judge on the one hand and the duties of the jury on the other. It is of course exclusively the function of the Judge to set forth the rules which govern the case with instructions as to their application.

On these legal matters you must take the law as I give it to you and you will not concern yourself with statements as to the law if any which counsel may have made in their summations or indeed at any other point during the trial.

For perfectly understandable reasons, of course, you are not to single out any one of my instructions as stating the law, but you should consider my instructions as a whole when you retire to your jury room to deliberate



1 in this case.

2 Unless otherwise indicated each instruction given  
3 should be considered by you as referring separately and individ  
4 ually to each defendant on trial.  
5

6 Now I want to make it very plain to you that my  
7 actions in this trial in passing upon motions made by counsel  
8 in the courtroom here or in overruling or sustaining objec-  
9 tions made by counsel are not to be taken by you as any  
10 indication of guilt or innocence of either of the defendants.  
11 Counsel not only have the right, but they indeed have the  
12 duty to object to the introduction into evidence of any  
13 testimony or exhibits which they believe should not be ad-  
14 mitted under the rules which govern these cases.

15 These of course are questions of law and procedure  
16 with which you should have no concern in your deliberations.

17 Similarly, I point out to you, and you will  
18 recall, that I occasionally asked questions of certain witnesse  
19 No inferences should be drawn from the fact that I did this.  
20 For better or worse my questions were intended only to  
21 clarify matters or to expedite matters and they were not  
22 intended to suggest any opinions which I have or might have  
23 as to the guilt or innocence of the defendants or whether  
24 one witness who appeared here is more credible than another  
25 witness.

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2 You also know in this particular regard that  
3 there were a number of occasions when there were a great many  
4 objections and a great many rulings made. I think you under-  
5 stand that those things were perfectly normal in these kind  
6 of cases. I think you also understand that although on an  
7 occasion or two when I perhaps was a little sharp in dealing  
8 with one or more lawyers, I didn't mean this against them  
9 or certainly as against their clients. I am sure that you  
10 also got the feeling that I have dealt with the lawyers in  
11 question before in other cases and that I know them and respect  
12 them.

13 Please understand that any of our differences  
14 were most respectful on their part and, I hope, on my part  
15 too. It has been argued and pointed out to you that  
16 it is your recollection and your understanding of the evidence  
17 and only your recollection and understanding of the evidence  
18 as a whole that can serve as a basis for your deliberations  
19 and verdict in this case.

20 This proposition flows from the basic principle  
21 of law that you, the jury, must keep in mind at all times,  
22 and that is that you are the sole and exclusive finders and  
23 judges of the facts based upon your recollection of the  
24 evidence.  
25

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2 When I shall state in my remarks, if I do,  
3 the major contentions of the parties as to factual issues  
4 I do not intend to state as a fact that any witness testi-  
5 fied thus and so, but only to point out the contentions  
6 of the parties based on the evidence as they see it.

7 When the lawyers have made their arguments  
8 to you based on their recollection of the evidence, they  
9 have been doing no more than that.

10 In other words, ladies and gentlemen, keep in  
11 mind that whatever the lawyers or the Judge may have said  
12 about their recollections of the evidence, if the recollec-  
13 tion of one or more of us does not accord with your  
14 recollection, then you must accept your recollection and only  
15 your recollection of the evidence as controlling.

End 5A

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The law presumes a defendant such as Philip Stoller or Martin Frank to be innocent of charges of crime. As I told you at the outset of this case the indictment is merely an accusation or a pleading or a charge. It is no evidence or proof of a defendant's guilt and it does not detract one whit from the presumption of innocence in favor of both defendants. You will not give any weight whatsoever to the fact that an indictment was returned by a grand jury sitting in this district against these particular defendants here on trial.

As you know, each defendant prior to trial pleaded not guilty to all of the charges in the indictment. Thus the government as its counsel knows has the burden of proving the charges against the defendants beyond a reasonable doubt. This is a burden that never shifts and remains upon the prosecution throughout the trial. A defendant under our system does not have to prove his innocence. On the contrary, as I have stated, he is presumed to be innocent of the charges contained in the indictment. This presumption of innocence was in his favor at the start of the trial, it has continued in his favor throughout the trial. It is in his favor as I speak at this moment and indeed it remains in his favor during the course of your deliberations in the jury room.

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2 It is removed only if and when you are satis-  
3 fied that the government has sustained its burden of proving  
4 the guilt of a given defendant beyond a reasonable doubt.  
5 The question naturally comes up at this point as to what  
6 does the law mean by this concept of reasonable doubt? Well,  
7 in a sense you could say that the words come close to  
8 defining themselves. Reasonable doubt is doubt founded in  
9 reason and arising out of the evidence in the case or perhaps  
10 from lack of evidence. It is a doubt which a reasonable person  
11 has after carefully weighing all the evidence. It means  
12 a doubt that is substantial and not just shadowy. A  
13 reasonable doubt is one which appeals to your reason, your  
14 judgment, your common sense and your own experience in life.  
15 It is not caprice, whim or speculation. It is not an excuse  
16 to perform an unpleasant or difficult duty. It is not  
17 sympathy for a given defendant. Rather, ladies and  
18 gentlemen of the jury, the law succinctly defines reasonable  
19 doubt to be a doubt which would cause prudent persons to hesi-  
20 tate before acting in matters of importance to themselves.

21 Finally on this subject I point out that  
22 reasonable doubt does not mean beyond all possible doubt.  
23 If the latter were the applicable standard few if any men and  
24 women would ever be convicted of any charge or crime.  
25

As you and I and everybody else in the room knows it is practically impossible for a human being to be absolutely convinced of any controverted fact which by its nature is not susceptible to mathematical computation and certainty.

As you recall, Defendants Stoller and Frank, as is their right, determined not to take the witness stand and testify on their behalf at the trial. This must not be considered by you as any evidence or the basis of any inference against either of the defendants. As I have already told you, under our system a defendant doesn't have to prove his innocence. He doesn't even have to offer any evidence if he chooses not to do so.

Thus, you must not permit the fact that a given defendant did not testify to be considered in the slightest degree against that defendant or any other defendant in the course of your deliberations.

Now during this trial counsel and the Court have endeavored to stress directly and by implication to you that this case must be decided only on the basis of evidence which was admitted during the trial in this courtroom in your presence and not on the basis of anything you have heard or read or seen outside of the courtroom.

When we talk about evidence in trials of this

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kind we really talk about two kinds of evidence. One is what the law calls direct evidence and the other kind is what the law calls circumstantial evidence. The direct evidence in this case consists of the sworn testimony upon both direct and cross examination of witnesses who took this chair to my immediate right, any exhibits, that is documents or physical objects, which were actually admitted into evidence, any facts which were stipulated by the attorneys on behalf of their clients as being true, and any facts of which the Court took judicial notice in your presence, and any facts which I might expressly instruct you to accept as being true in the course of my charge or instructions hereinafter. This is all of the direct evidence and the only direct evidence which you are to consider in your deliberations. Any evidence as to which an objection was sustained by the Court you understand you must disregard. Questions asked by the lawyers as well as questions asked by the Judge are not, of course, alone evidence at all. It is only the answers of the witnesses taken in light, of course, of the questions they are answering which are evidence. Of course, as I have already stated, opening statements, arguments, summations of the lawyers certainly are not evidence in the case. Incidentally, going back to stipulations of facts by counsel, and you will recall there were several



of these, you should consider each stipulation only in regard to the defendant or defendants who joined in or agreed to the stipulation in question. In addition to your consideration of the direct evidence, however, you are permitted to, and indeed you should, draw from the facts which you find have been proved by direct evidence any reasonable inferences as seem justified to you in the light of your experience and common sense.

What I am talking about here, ladies and gentlemen, is circumstantial evidence. In this connection, of course, you must accept and apply in your deliberations on the evidence, whether it be direct evidence or circumstantial evidence, any presumptions or other rules such as the presumption of innocence and the rule of reasonable doubt about which I instructed you a moment or two ago.

Now dealing with the concept of circumstantial evidence, this is something you have all used in your own lives, I am sure. For our purposes, simply permit me to define circumstantial evidence, to mean evidence which does not itself directly establish a fact sought to be proved but instead by the every day process of reasoning or inference, as it is sometimes called, may lead you to the fact which is sought to be proved.

In these courtrooms various examples are given

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2 from time to time of circumstantial evidence. I might  
3 point out to you that if you were on a desert island and  
4 you thought you were alone and one morning you arose from  
5 slumber under your coconut palm and went down to the beach  
6 and you saw the print of a man in the sand, you would  
7 draw the inference that there was another man on the island  
8 because you hadn't been going barefooted, you had been  
9 wearing sandals all the time. Of course, you wouldn't  
10 have seen this other man, therefore you would be drawing  
11 an inference. You would be by circumstantial evidence  
12 determining that there was another human being on that  
13 island. Well, you all know myriad examples of the  
14 point which I am trying to make.

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2 To conclude on the subject, I point out to you  
3 that the significance of any piece of evidence, whether  
4 it is denominated direct evidence or circumstantial evidence,  
5 consists only in whatever light it may shed on the questions  
6 of guilt or innocence which you are here called upon to  
7 decide.

8 I turn now to another subject, and that  
9 is this, and it is an important one. In every crime there  
10 must exist what I will call a union or joint operation of  
11 act and intent. The burden is always upon the prosecution,  
12 as it knows, to prove both act and intent beyond a reason-  
13 able doubt.

14 A person who knowingly does an act which the  
15 law forbids or knowingly fails to do an act which the law  
16 requires to be done, intending with bad purpose either to  
17 disobey or disregard the law, may be found to act with  
18 intent or, as it is sometimes called, guilty knowledge.

19 Intent or guilty knowledge may be proved by cir-  
20 cumstantial evidence. Indeed, it rarely if ever can be  
21 established by any other means. While witnesses may see and  
22 hear and thus be able to give us direct evidence of what a  
23 defendant does or fails to do, there can be no eye-witness  
24 account of the state of mind with which the acts were  
25 either done or were omitted. But what a defendant does or

fails to do may indicate intent or lack of intent to commit the offense or offenses charged.

The proof of the circumstances surrounding the transactions which were brought out at trial can supply an adequate basis for a finding that a given defendant acted wilfully or with intent and guilty knowledge.

You are all familiar with the old adage that the actions of a man or woman must be set in their time and place. I am sure you are just as familiar with the old saying that just as the meaning of a word is only understood in its relation to other words in a sentence, so the meaning of a particular act or failure to act may depend upon the circumstances surrounding that.

Therefore, you may consider the evidence which you recall and which relates not only to a specific given transaction or conversation or event, but as well to the surrounding circumstances, in your consideration of this important contested issue of intent, more about which I will discuss with you in a few moments.

Parenthetically, however let me point out at this point that it is not necessary for the prosecution to prove knowledge of the accused that a particular act or failure to act is a violation of a specific law or statute. Unless and until outweighed by evidence to the contrary, the

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2 presumption is that every citizen knows what the law  
3 forbids and what the law requires to be done.

4 Now, before getting to the charges at hand, I want to  
5 emphasize to you, and I will emphasize this again, that in  
6 your deliberations it is your duty to give careful separ-  
7 ate consideration to the cases of each defendant. As  
8 I am sure you all understand, guilt is a very personal thing,  
9 and though this was a joint trial, you will understand the  
10 force and significance of treating each defendant separately  
11 and scrupulously so and weighing the evidence which relates  
12 directly to him in the main before you make any determination  
13 of guilt or innocence.

14 Each defendant is entitled under our system to have  
15 the case determined basically on evidence of his own acts  
16 and statements, that is to say, evidence directly showing  
17 what he said or what he did or what he did not do.

18 As I think is implicit from what I have just  
19 said, and as you certainly know in significant part, we  
20 started out this trial with two separate indictments which  
21 were consolidated by agreement of the prosecution and the  
22 defense. You also will recall that at the end of the  
23 government's case this court for technical reasons which  
24 should not concern you at all now dismissed certain  
25 counts. Specifically you may recall that I dismissed the

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2 three counts in the so-called second indictment; those  
3 were three counts accusing the defendants of what is called  
4 simply obstruction of justice. So those are no longer  
5 before you, and also I dismissed Counts 11, 12, 13 and 15.  
6 Those were four so-called false statement counts which were  
7 alleged against Stoller only, in which he was accused of false  
8 statements before the Securities & Exchange Commission when  
9 he was examined there under oath on June 20, 1969, I believe.  
10 Two of those counts still remain, as you will hear me in-  
11 struct you in a few moments.

12 Before I turn to Counts 1 through 10, I am going  
13 to take up-in reverse order, so to speak, Counts 14 and 16.  
14 This is done for convenience and hopefully for expedition of  
15 my remarks only. Then I will turn to Counts 1, 2 and including  
16 10, which, of course, both Stoller and Frank are named as  
17 defendants, among others.

18 These two counts, that is 14 and 16, are charges  
19 accusing Philip Stoller with violating a statute known as  
20 Section 1001 of the Federal Criminal Code. I am going to  
21 read to you the significant portion of that statute upon  
22 which these two counts or charges are based.

23 I quote: "Whoever, in any matter within the  
24 jurisdiction of any department or agency of the United  
25 States knowingly and wilfully makes any false, fictitious

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or fraudulent statements or representations, shall be guilty  
of a crime."

That is the statute or the portion of the statute  
upon which these two counts, 14 and 16, are based.



Now, let me read to you once again those counts.

In the preamble of those two counts the indictment recites the following, that "On or about June 20, 1969," in this judicial district, "Philip Stoller, the defendant, having duly taken an oath that he would testify truly before a competent tribunal and officer in a case in which a law of the United States authorized an oath to be administered," specifically, "an officer of the United States Securities and Exchange Commission, did unlawfully, wilfully and knowingly and contrary to said oath state material matters which he did not believe to be true."

"At the time and place aforesaid, the United States Securities and Exchange Commission was conducting an investigation concerning possible violations of the laws of the United States prohibiting, among other things, manipulation of securities, fraud in connection with the offer, purchase and sale of securities, the involvement of Swiss banks and the purchase and sale of securities and the sale of unregistered securities in connection with transactions in the common stock of Training With the Pros, Incorporated."

Now, incidentally, let me pause and say for shorthand purposes I will hereinafter refer to Training With the Pros as TWP.

The preamble to these two counts goes on to

1 gab-2

2 read as follows:

3 "It is material to said inquiry to ascertain  
4 the participation and knowledge of defendant Philip Stoller,  
5 and others in the underwriting and trading in the after  
6 market of the common stock of TWP in his account and  
7 the accounts of others, including but not limited to trans-  
8 actions for clients of co-conspirator Bank Hofmann, A.G."

9 "At the time and place aforesaid Philip Stoller,  
10 the defendant, appearing as a witness under oath before said  
11 officers of the United States Securities and Exchange Com-  
12 mission did unlawfully, wilfully and knowingly falsify,  
13 conceal and cover up, and did make false, fictitious and  
14 fraudulent statements and representations, as follows."

15 Now, Count 14 reads as follows:

16 "Now, for the record, and to make it absolutely  
17 clear, I do not now own one share of Training With the Pros.  
18 I did not own one share from the moment that transaction  
19 with Hofmann was executed."

20 This is Stoller speaking.

21 "Do you have any nominees who own any stock  
22 at this time, friends?

23 "A That is different again. Friends and nominees  
24 are two different things. I have no financial interest  
25 in a share of Training With the Pros. Whether people I know

have stock or not, I don't know, and I couldn't say, nor would I say.

"Q So you are stating that your only connection with Training With the Pros was this initial purchase from you, or rather by you from these five people, and your sale to Bank Hofmann of Training With the Pros?

"A Right. Of course, looking to the future, I am hopeful that they sell it some day at a couple of hundred dollars a share and I receive a further reward for good offices rendered. If it is what I think it is, they will make a great deal of money, but if you are looking in terms of distribution, I don't own any stock."

Count 16 reads as follows:

"Q Mr. Stoller, do you know a Jerome Allen?

A Yes, I do.

"Q Mr. Stoller, do you know if Mr. Allen owns any stock of TWP?

"A I have no knowledge.

"Q Do you know if Mr. D'Onofrio owns or owned at any time?

"A I have no knowledge. I am using the word knowledge in its absolute sense, you know.

"Q When you say 'absolute sense,' would you clarify that?

1 gab-4

2 "A Well, if you put a match under my fingers, I  
3 have knowledge you just burnt me, because I saw you burn me  
4 and I felt it.

5 "Q In other words, you have no direct knowledge out-  
6 side of possible suppositions?

7 "A My favorite course in high school was semantics.  
8 I have no knowledge."

9 Finally it is alleged that "The testimony of the  
10 defendant, Philip Stoller, enumerated hereinabove in Counts  
11 14 and 16, as he then and there well knew, was untrue.

12 I point out to you that the purpose of the  
13 statutory section which I just read to you was in substance  
14 to protect the authorized functions of various Federal Govern-  
15 ment agencies. In this case the Government agency, of  
16 course, was the United States Securities and Exchange Com-  
17 mission, sometimes called the SEC, which, as you know, in  
18 general is charged with enforcing and regulating the  
19 securities laws of the United States.

20 End 6 B

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Section 1001 was designed and passed by Congress to prevent persons from not only making false statements, but also from concealing material facts for the purpose of creating a misapprehension in the Government agency as to the true state of affairs in the matter under investigation.

Now I instruct you that in order to find the defendant Stoller guilty of the crimes charged in Counts 14 and/or 16 you must be satisfied beyond a reasonable doubt of the following essential elements.

First, that on or about June 20, 1969, Stoller made statements or answered questions to the United States Securities and Exchange Commission.

Second, you must find beyond a reasonable doubt that such statements in significant part were false, fictitious or fraudulent.

Third, you must be satisfied beyond a reasonable doubt that at the time Stoller knew full well that such statements or representations or answers, if you will, were false, fictitious or fraudulent in substantial part.

Fourth and last, you must be satisfied beyond a reasonable doubt that such statements or representations were made in a matter within the jurisdiction of the SEC.

With respect to this fourth or last element,

1  
2 I instruct you that as a matter of law an investigation of  
3 possible violations of the Securities Acts of the United  
4 States is within the jurisdiction of the SEC which in turn  
5 is an agency of the United States of America.

6 Now, a couple of things that I want to point out  
7 to you in this regard. As you know, the Government claims  
8 that in these two counts, not every single word that  
9 Mr. Stoller said was false or untrue but that taken as a whole  
10 the answers were significantly untrue and were misrepresenta-  
11 tions knowingly made by him to disguise his knowledge of  
12 the TWP distribution.

13 For example, in Count 14, just to give you an  
14 isolated example, perhaps, one of his answers is "I have no  
15 financial interest in a share of TWP."

16 I believe the Government would concede that as  
17 of June 20, 1969, that was literally true. However, what  
18 the Government argues is that some of the remaining answers  
19 and the totality of these answers were false, particularly  
20 in that they conveyed and were intended to convey that  
21 Allen was covering up and not telling the truth about other  
22 persons, nominees or friends having or having had shares of  
23 TWP.

24 MR. GOULD: I think your Honor misspoke. You  
25

1 qb-3

2 said Allen and I think you meant Stoller.

3 THE COURT: I stand corrected, I obviously  
4 meant Stoller.

5 The defense says that if you will analyze these  
6 answers in Count 14, for example, and indeed in Count 16,  
7 that this is quite different: that Allen was trying to give  
8 answers only based on his direct knowledge and that he wasn't  
9 going to make any surmises or guesses about other people.

10 Well, those are fair arguments on both sides  
11 and you certainly can consider it. I would only also  
12 point out that when you read these keep in mind what I said  
13 a moment ago. You may find that certain isolated portions  
14 of the answers were on their face literally true at the  
15 moment given.

16 But that doesn't mean your inquiry is ended.  
17 You should read both counts in their totality, assess them  
18 as a whole, and then decide whether or not the Government  
19 has proved beyond a reasonable doubt the four essential  
20 elements which I instructed you on.

21 Now I turn to Counts 1, 2 and including 10 of  
22 the indictment which, as I have stated, and as you know,  
23 mentions both defendants here on trial, and accuses them  
24 both of participation in those particular charges.  
25



qb-4

1  
2 Preliminary to my reading of the counts and  
3 discussing the special rules which are applicable to each  
4 of those counts and instructing you as to the essential  
5 elements which you must find proved in order to support a  
6 conviction under any one of these counts, I want to talk to  
7 you generally about the laws involved here and what they  
8 mean generally for purposes of considering the case before  
9 you.

10 Basically, as you know, Count 1 charges a  
11 conspiracy inwhich the defendant Stoller and Frank are  
12 alleged to have been members to violate three Federal statutes,  
13 one section of the Securities Act of 1933, another section  
14 of the Securities Act of 1934, and, thirdly, and lastly,  
15 the Federal Mail Fraud Statute in connection with the distri-  
16 bution of 42,000 shares of TWP under a Regulation A offering  
17 which became formal and took place on February 4, 1969.

18 Let me explain preliminarily in this context some  
19 of the general history and purpose of particularly the  
20 Securities Acts in question and then later on I will deal with  
21 the so-called Federal Mail Fraud Statute.

22 The Securities Acts, particularly the Securities  
23 Act of 1933, relate generally to the offer and sale of  
24 securities and were passed for the purpose of providing  
25 full and fair disclosure of the character of securities sold

1 qb-5

2 in interstate and foreign commerce and through the mails  
3 and to prevent frauds in the sale thereof and for other pur-  
4 poses. Thus the 1933 Act specifically, for example, contains  
5 provisions requiring that before a security is offered  
6 for sale to the public the company issuing the security is  
7 obliged to file a registration statement or under certain  
8 circumstances, and here for importance in our case, what is  
9 called an offering circular, making a substantial and accurate  
10 disclosure of certain material facts relating to the affairs  
11 of the company which is issuing the stock and the issuance  
12 of the stock in question.

13 As you all know, securities by their very nature  
14 are really quite different from merchandise which you and I  
15 are accustomed to buying in stores and markets. That is to  
16 say, if one of us wants to buy a suit of clothes or a dress  
17 or an appliance we have a reasonably good opportunity to  
18 look it over, fondle it, open it up or whatever, and inspect it  
19 up to a point at least and then we are accustomed to determine  
20 its quality and its reasonableness of price compared to  
21 competing products. We can't quite do this as a practical  
22 matter with sharing of stock. Further it is a practical  
23 matter, in other words, that it is impossible or at the  
24 least very difficult for the average purchaser of a share of  
25 stock to distinguish between securities of little or no

1 value and securities offering a reasonable prospect of  
2 appreciation or satisfactory dividend income return on the  
3 investment by merely visiting the company's plant or con-  
4 ducting an inspection there, as you would do if you were  
5 buying an automobile.  
6

7 Therefore, the investor necessarily must rely upon  
8 available oral and written information about the issuing  
9 company, its financial condition, the terms of the offering  
10 of its stock, the identify and background of its officers,  
11 directors and agents and in particular relation to our case,  
12 the identity of the underwriters, if any, and those persons  
13 who are handling the offering for the issuing company, and  
14 the use to which the proceeds of the offering are going to  
15 be put by the company as well as numerous other bits of in-  
16 formation upon which I will not dilate upon here. Therefore,  
17 the 1933 Securities Act is concerned in substantial part with  
18 the sales of securities either directly by the issuing  
19 company or by persons in control of or affiliated with those  
20 in control of the issuing company.

21 That act does not, I emphasize, empower the SEC  
22 to pass upon the merits of a given stock issue or security  
23 issue. The Act however does require disclosure of all  
24 pertinent facts necessary to reveal the substance or lack  
25

1 of substance of securities being offered for sale to the  
2 public.  
3

4 Now, turning closer to our case, and I don't  
5 think there is any dispute by the bye about this between the  
6 parties, under the circumstances of the issuance of 42,000  
7 shares of TWP beginning in February 1969, that issue was not  
8 required to be registered under the Securities Act.

9 This is in part because of the size of the  
10 company, in part because of the number of shares and their  
11 alleged value. In other words, as I have already stated,  
12 under the Act and the regulations of the SEC, this TWP  
13 issuance was what is called by lawyers and others familiar  
14 with the law and the securities business to be a Reg. A,  
15 or a Regulation A offering.

16 Specifically in passing I should point out at  
17 that time the statute, which was Section 35 of the 1933 Act  
18 and the SEC regulations thereunder, provided that if a stock  
19 issuance did not exceed \$300,000 in value it could be a  
20 Reg. A offering and, of course, as you know, this was the  
21 intent and purpose of the TWP offering.

22 In a so-called Regulation A offering the law  
23 requires that information be provided to potential investors  
24 in a document which is usually referred to by the SEC in  
25 its regulations and others as an offering circular. Unless

2 and until requisite disclosures in an offering circular were  
3 satisfied, the mails and channels of interstate commerce for  
4 trading in the security would not be permitted. Regulation  
5 A offerings, as you might infer from what I have already said,  
6 were really designed by Congress from what I have already said,  
7 were really designed by Congress and the SEC to assist small  
8 business to raise capital. Therefore, the procedures for  
9 filing a Reg. A offering, including preparing and filing an  
10 offering circular, generally speaking, are far more simple  
11 and less expensive than filing a full registration under that  
12 Act and the regulations.

13 The SEC did in the time here in question and  
14 still does require by its regulations that in a Reg. A  
15 offering the offering circular must contain a full and accurate  
16 statement of facts necessary for a putative investor to make  
17 a reasonably informed judgment on whether or not to buy the  
18 stock.

19 There necessary facts which must be contained  
20 therein include, among other things, a description of the  
21 securities being offered, the terms of the offering including  
22 the number of shares to be sold, the offering price, the  
23 amount and terms of payment of the underwriter's commission,  
24 the time period for the offering and who is under-  
25 writing, if anybody is underwriting the offering.

When stock is offered for sale by means of a

1 qb-9 3520  
2 Regulation A offering that offering must be made, as you  
3 must keep clearly in mind, and is made really, to the  
4 public.

5           Going on further, let me point out that after  
6 Congress enacted the Securities Act of 1933 in the following  
7 year, 1934, they enacted what is called the Securities  
8 Exchange Act. That Act, among other things, was designed  
9 to provide for the regulation of Securities Exchanges and  
10 over-the-counter markets operating in interstate and foreign  
11 commerce and through the mails to prevent inequitable and  
12 unfair practices on such Exchanges and markets and for other  
13 purposes. In other words, in 1934 Congress built further  
14 upon the edifice which they erected in the 1933 Act in order  
15 to insure open and free trading without deception or fraud of  
16 the investing public.

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As you know, and as I have stated already, Count 1 charges a conspiracy on the part of D'Onofrio, Herbert and the two defendants on trial to violate certain provisions of the law, mainly the two acts I have already discussed in general terms with you and the mail fraud statute.

Counts 2 through 10 charge that the defendants committed actual violations under certain circumstances of these laws or some of them. These counts, 2 through 10, as I told you at the outset are what lawyers also sometimes refer to as substantive counts as compared to Count 1 which is the so-called conspiracy count.

Let me take up with you first, of course, Count 1, the conspiracy count, and point out to you that this is predicated on what is known as the federal conspiracy statute which reads in significant part, for our purposes, as follows:

"If two or more persons conspire to commit any offense against the United States and one or more of such persons does any act to effect the objects of the conspiracy each shall be guilty of a crime." That is the basic statute which underpins Count 1 in this indictment.

Let me read Count 1 as I did to you at the



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outset of the trial. Let me remind you, as I read this, and please keep this in mind and I will point it out to you specifically when I get to the right point, that two subparagraphs of this count were stricken at the end of the government's case because the government conceded at that time that they had not proved these specific paragraphs.

Let me start reading the indictment. There is an introductory portion to Count 1 and indeed to the indictment as a whole. It reads as follows:

"The defendant Philip Stoller was, at all times material, a self-employed financial consultant. The defendant Martin Frank was, at all times material, an attorney admitted to practice in the State of New York. The defendant Jerome Allen was, at all times material, a self-employed financial consultant. The defendant Alfred T. Herbert was, at all times material, an employee of Bank Hofmann A.C., a Swiss bank located in Zurich, Switzerland. At all times material to this indictment Stoller had a beneficial interest in a secret coded account at Bank Hofmann code named Shirley. At all times material the defendant Martin Frank had a beneficial interest in secret coded account at Bank Hoffman code named Lance. At all times material the defendant Jerome Allen had a beneficial interest in a secret coded account at Bank

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Hoffman code named Erika. At all times material three other secret coded accounts were serviced by Bank Hofmann for Muir Weissinger, Joseph Bonavia and Ramon D'Onofrio, code names Pompeii, Barbin and Gypsy, respectively. In 1965 TWP was incorporated in the State of New York under the name M& H Studios. On or about February 4, 1969 TWP sold to the public pursuant to a Regulation A offering 42,000 shares of common stock at \$7 per share. Then turning directly to the allegations in Count 1, it is alleged further that from on or about the first day of June 1968 and continuously thereafter up to and including the date of the filing of this indictment, which as I recall was in February of 1974, February 15th to be exact, in this judicial district and elsewhere Philip Stoller, Martin Frank, Jerome Allen and Alfred T. Herbert, the defendants, and TWP, D'Onofrio, Joseph Arden and Bank Hofmann named herein as co-conspirators but not as defendants unlawfully, wilfully and knowingly did confederate, conspire, combine and agree together and with each other and with other persons known and unknown to the grand jury to commit certain offenses against the United States, to wit, and then the indictment goes on to recite Section 17 of the 1933 Securities Act, Section 10(b) and Rule 10b-5 thereunder of the 1934 Act and the United States Mail Fraud Act. The indictment then picks up

under a heading entitled Objects of the Conspiracy. And I quote hereunder: It was part of said conspiracy that the defendants and co-conspirators unlawfully, wilfully and knowingly in the offer and sale of securities specifically the common stock of co-conspirator TWP by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails would directly and indirectly, A, employ devices, schemes and artifices to defraud, B, obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made in the light of the circumstances under which they were made not misleading and, C, engage in transactions, practices and courses of business which operated and would operate as a fraud and deceit upon the purchase of the aforementioned securities, and upon any and all persons to whom the said defendants and co-conspirators directly and indirectly would attempt to sell the aforementioned securities. It was further part of said conspiracy that the defendants and co-conspirators in connection with purchase and sale of TWP common stock would and did directly and indirectly by use of means and instruments of interstate commerce and the mails use and employ manipulative and deceptive devices and contrivances in contravention of

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2 Rule 10b-5, a rule prescribed by the Commission, that is to  
3 say, the SEC, as necessary and appropriate in the public  
4 interest and for the protection of investors. It was further  
5 part of said conspiracy that the defendants and co-conspir-  
6 ators having devised and intending to devise a scheme  
7 and artifice to defraud and attempting so to do would place  
8 and cause to be placed in post offices and authorized  
9 depositories for mail matter and would cause to be delivered  
10 by mail, according to the direction thereon, certain matter  
11 to be sent and delivered by the Post Office Department.

12 Then the indictment sets forth the following  
13 heading:

14 "Means of the Conspiracy: Paragraph 5, among  
15 the means by which the defendants and co-conspirators would  
16 and did carry out such conspiracy were the following: Subpara-  
17 graph A, prior to June 1, 1968 defendant Stoller, Allen and  
18 Herbert opened and maintained coded accounts at co-conspirator  
19 Bank Hofmann for Joseph Bonavia, code named Barbin and for  
20 Muir Weissinger code named Pompeii. Subparagraph B, prior to  
21 June 1, 1968 the defendant Alfred T. Herbert opened secret  
22 coded accounts at co-conspirator Bank Hofmann A.G. for  
23 defendants Allen, Stoller, Martin Frank and co-conspirator,  
24 D'Onofrio. .C, in or about the spring of 1968 co-conspirator  
25 D'Onofrio met with Elmer Bud Moss, president of TWP and

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2 agreed to aid Moss in underwriting an issue of common stock  
3 of TWP. D, in or about June, July and August 1968 de-  
4 fendant Stoller, Allen and co-conspirator D'Onofrio met and  
5 agreed to obtain a substantial portion of the issue of  
6 TWP to park their holdings in their secret coded accounts  
7 and thereafter to realize profits by selling their holdings  
8 in TWP stock to accounts controlled by Stoller, Allen,  
9 Herbert specifically Porpeii and Barbin. when the price  
10 of TWP had risen. E, thereafter in or about the fall of  
11 1968 the defendant Stoller, Allen and co-conspirator D'Onofrio  
12 met defendant Martin Frank who instructed them in consider-  
13 ation of receiving moneys from the sale of TWP securities  
14 at higher prices that they would avoid detection by using  
15 nominees to purchase the shares of TWP in the underwriting  
16 and then repurchasing said shares before parking or depositing  
17 said shares in their coded accounts at co-conspirator Bank  
18 Hofmann; after purportedly selling their shares to Bank  
19 Hofmann for the account of Bank Hofmann. F, in or about  
20 December 1968 and January 1969 defendant Stoller assigned  
21 5,000 shares at \$5 per share of TWP to five persons, namely  
22 1,000 shares each to his wife, mother, mother-in-law, a  
23 friend and neighbor and a relative of co-conspirator Joseph  
24 Arden with the understanding that said shares would be held  
25 by said persons until after the effective date of the

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2 underwriting of TWP and then returned or sold to  
3 defendant Stoller at approximately \$8.50 a share.

4 G, in or about December 1968 and January 1, 1969

5 defendant Allen assigned 5,000 shares at \$7 a share of TWP  
6 to five persons, namely 1,000 shares each to himself, his wife,  
7 co-conspirator Arden, the wife of Arden, one Sarah

8 Striziver and a friend with the understanding that said  
9 shares would be held by said persons until after the effect-  
10 ive date of the underwriting of Training With the Pros,  
11 TWP, and then returned or sold to Jerome Allen at about  
12 \$8.50 a share. H, in or about December 1968

13 and January 1969 co-conspirator D'Onofrio assigned 4,900  
14 shares at \$7 a share to five persons, namely 1,000 shares  
15 each to four associates of his and 900 shares to another  
16 associate with the understanding that after the effective  
17 date of the underwriting of TWP these shares would be  
18 returned to him, D'Onofrio. I, on or about February 4,

19 1969 the underwriting of TWP common stock became effective,  
20 said underwriting consisted of 42,000 shares at an  
21 offering price of \$7 per share; 14,900 shares of the above  
22 mentioned 42,000 shares were as of the effective date con-  
23 trolled by defendant Stoller, Allen and co-conspirator D'Ono-  
24 frio.

25 Now, the next paragraph J has been stricken by or-  
der of the court because it has not been proved so I will  
not read you that.



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2 I turn now to subparagraph K of paragraph 5:

3 "On or about February 25, 1969 after the price  
4 of TWP common stock had risen to about \$30 per share, 10,000  
5 shares of the above mentioned 14,900 shares were purportedly  
6 sold by Stoller and Allen to Bank Hofmann at approximately  
7 \$10 per share when, in fact, all 14,900 shares were de-  
8 livered to Switzerland by Stoller and given to defendant  
9 Herbert who placed said shares in the secret coded accounts,  
10 at Bank Hofmann of Stoller, Allen and D'Onofrio.

11 "Subparagraph L, during the period from  
12 February 4, 1969 up to approximately March 12, 1969 Stoller,  
13 Allen, Herbert and D'Onofrio purchased approximately an  
14 additional 3,300 shares of TWP in the open market through  
15 Bank Hofmann.

16 "M, on or about March 12, 1969 Stoller,  
17 Allen and Herbert and D'Onofrio sold the above mentioned  
18 14,900 shares and the above mentioned approximately 3,300  
19 shares to the coded accounts of Bonavia and Weissinger at  
20 approximately \$50 per share for a total cost to Bonavia and  
21 Weissinger of about \$900,000.

22 "N, in or about March 1969 the broker dealer  
23 firm of Emanuel Deetjen & Co. refused to transfer into  
24 street name the above mentioned 14,900 shares which were  
25 still in the names of nominees without a showing that said



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2 shares were owned by co-defendant Bank Hofmann.

3 "O, in or about March 1969 defendant Martin  
4 Frank notarized, without dating, certain documents which  
5 allegedly authenticated the sale to defendant Jerome Allen by  
6 the nominees of Allen the 5,000 shares defendant Allen purchase  
7 at approximately \$8-1/2 per share and a document allegedly  
8 authenticating the sale of the above mentioned 5,000  
9 shares to Bank Hofmann by Allen.

10 "P, the purpose of said notarizations was to  
11 cause Deetjen to believe that the nominees had sold their  
12 stock to Allen who, in turn, sold the stock to Bank  
13 Hofmann when in fact, Allen as well as Stoller and  
14 D'Onofrio sold the aforementioned 14,900 shares to them-  
15 selves, to wit, the stock was deposited in their secret  
16 coded accounts by Alfred T. Herbert.

17 "Q, as a result of the above mentioned  
18 activities, referred to hereinabove, defendant Stoller,  
19 Allen, Herbert and co-conspirator D'Onofrio divided among  
20 themselves before certain expenses were deducted approximately  
21 \$900,000, which defendant Herbert after receiving a per-  
22 centage of moneys from each of the other defendants and the  
23 co-conspirator, D'Onofrio, credited to their respective  
24 secret coded accounts at Bank Hofmann, specifically  
25 Shirley for Stoller, Erika for Allen and Gypsy for D'Onofrio."

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2 This brings me to subparagraph R, and here  
3 I instruct you once again that this particular subparagraph  
4 was stricken for failure of proof in the government's case.

5 This brings me to subparagraph S:

6 "Defendant Martin Frank was also promised  
7 additional moneys by defendants Allen and Philip Stoller  
8 derived from the proceeds of the unlawful, manipulative  
9 activities of himself and Stoller, Allen, Herbert and  
10 D'Onofrio.

11 Subparagraph "T, on or about April 1969 and  
12 May 1969 Stoller and Allen caused brokers to recommend to  
13 customers of said brokers the purchase of TWP common  
14 stock for the purpose of raising the price of Training With  
15 the Pros stock so as to permit Bonavia and Weissinger to sell  
16 their holdings at a profit.

17 Finally subparagraph U of paragraph 5 reads as  
18 follows:

19 "As a result of the above-mentioned activities  
20 of the defendants, the investing public suffered sub-  
21 stantial monetary losses.

22 Now, lengthy as it may be, I am obliged to go  
23 further and read to the last portion of Count 1, which  
24 I don't believe has ever been read to you before. This is  
25 the so-called overt acts section. Let me read this to

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2 you.

3 Under the heading of Overt Acts it is alleged  
4 here "In furtherance of the conspiracy and to effect the  
5 objects thereof, the defendants committed the following  
6 overt acts, among others, in this judicial district.

7 "No. 1, in or about the fall of 1968 defendant  
8 Steller, Allen, co-conspirator D'Onofrio, met and had  
9 conversations at the brokerage firm of Hancock Securities,  
10 79 Pine Street, New York City."

11 MR. GOULD: If your Honor please, I think  
12 maybe it is a defect in the copy you have. I think  
13 Mr. Sorkin will concede that that paragraph is out.

14 THE COURT: Which paragraph?

15 MR. GOULD: No. 1.

16 MR. SORKIN: 1. Yes, your Honor.

17 THE COURT: I beg your pardon. You see, the  
18 clean copy you gave me, and I am not blaming you for this,  
19 is very illegible. I am working from an old copy which I  
20 haven't marked.

21 Are there any other overt acts?

22 MR. SORKIN: Yes, 8, 9 and 10, your Honor.

23 MR. GOULD: 4 is out, your Honor.

24 MR. SORKIN: 4, 8, 9.

25 MR. GOULD: 8, 9.

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2 MR. GOULD: 8, 9, 10.

3 THE COURT: Right. I think I could read the  
4 copy that we made these excisions on, and I apologize to the  
5 parties, counsel and the jury. Since mine is so faint,  
6 I was reading from an older one which didn't have these  
7 striking reflected. So we will start over again.

8 Overt Act No. 1 is out of the case.

9 So that leads me to read to you Overt Act No. 2  
10 as follows:

11 "On or about October 17, 1968 defendant Herbert  
12 caused a letter to be delivered at 41 West 86th Street, New York  
13 City.

14 "3, in or about October or November 1968 defendant  
15 Stoller, Allen and Frank had a conversation at 144 East 44th  
16 Street, New York City.

17 "5, on or about February 4, 1969, defendant  
18 Philip Stoller caused a check for \$7,700 to be mailed  
19 from Brooklyn, New York to the Irving Trust Company here  
20 in Manhattan.

21 "6, in or about December 1968 or January 1969  
22 defendant Stoller and Allen and co-conspirator D'Onofrio had  
23 a conversation at 118 East 60th Street, New York City

24 "7, in or about January 1969 defendants Philip  
25 Stoller, Jerome Allen and co-conspirator D'Onofrio entered

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2 41 West 86th Street, New York City."

3 Then I skip numbers 8, 9, and 10 which have also  
4 been stricken, and read to you overt act No. 11 as follows:

5 "In or about March 1969 defendant Frank notarized  
6 documents.

7 "12, on or about April 5, 1969 defendant Jerome  
8 Allen had a conversation.

9 "15, on or about April 17, 1969 defendant  
10 Philip Stoller had a conversation."

11 Finally, No. 14, "On or about May 21, 1969  
12 defendant Philip Stoller had another conversation."

13 Now, because of my difficulties with my copy,  
14 let me repeat once again that overt acts Nos. 1, 4, 8,  
15 9 and 10 have been stricken by an earlier ruling of the  
16 Court and, thus, are not to be considered by you. I should  
17 say to you, ladies and gentlemen, I will give you a clean  
18 copy of this indictment when you retire to deliberate, and  
19 counsel and I have seen to it that the stricken portions  
20 are out of that clean copy so you should not, I trust, be  
21 confused.

22 Unfortunately I am obliged to cover a great deal  
23 of ground and there is absolutely no chance, particularly  
24 with the unavoidable delays we encountered earlier this  
25 morning for me to finish before luncheon. I think that

1 rather than start on discussion of conspiracy law and  
2 the issues in Count 1, I want you to understand that  
3 I think I can finish that before 1 o'clock, but I may have  
4 to run a few minutes over. Then we will cease for luncheon  
5 and I will take up the rest of my charge after luncheon.  
6

7 Now, in order to prove this conspiracy Count  
8 1 against either or both defendants on trial, there are  
9 three essential elements under the law which the prosecution  
10 as I am sure it knows, must prove beyond a reasonable doubt.

11 First, that there was an agreement or conspi-  
12 racy existing between two or more conspirators, defendants,  
13 to violate at least one of the laws alleged in Count 1. Put  
14 differently, you must be satisfied beyond a reasonable doubt  
15 that there existed a conspiracy to violate either or all  
16 of three statutes, the Federal Mail Fraud Statute, Section  
17 17 of the 1933 Act or Section 10(b) of the 1934 Act,  
18 which I am going to read to you when I come to them in a  
19 few moments.

20 Put differently and in practical terms, you  
21 must be satisfied from the proofs beyond a reasonable doubt  
22 that there did exist a conspiracy between at least two of  
23 either the defendants or the co-conspirators to erect a  
24 scheme, an artifice to defraud in connection with the sale  
25



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2 of shares of TWP beginning on or about February<sup>4</sup>, 1969  
3 and thereafter.

4 The second essential element that you must be  
5 persuaded of beyond a reasonable doubt is that a given  
6 defendant under consideration by you at the moment is shown  
7 to have knowingly and wilfully become a participant in this  
8 scheme as charged in Count 1.

9 Third and last, you must be satisfied beyond  
10 a reasonable doubt that the government has proved that  
11 at least one overt act as alleged and still remaining in the  
12 case actually took place.

13 Now, I turn to a discussion of conspiracy law.  
14 I emphasize to you that the gist of the crime of conspiracy  
15 is the unlawful combination or agreement to violate the  
16 law. It is not necessary to prove, incidentally, that the  
17 agreement actually was contemplated to violate all the  
18 laws. It is sufficient if you find that the conspiracy  
19 was aimed at violating one of these laws.

20 I also point out to you that in order to find  
21 proven the crime of conspiracy, it is not necessary that  
22 you determine that the conspiracy actually succeeded. Of course  
23 as you know here in this case, the government claims at  
24 least to an extent the conspiracy did, in fact, succeed.  
25 My only point here is to instruct you that in evaluating



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2 the conspiracy count success need not be proven.

3 Now, sometimes in describing a conspiracy it has  
4 been called a partnership in criminal purposes.

5 More accurately and completely perhaps, it should  
6 be said that a conspiracy is a combination of two or more  
7 persons by **concerted** action to accomplish a criminal or  
8 unlawful purpose.

9 Now, in order to prove a conspiracy the prosecution  
10 is not required to show that two or more persons sat down at  
11 the table and entered into a precise written agreement to  
12 violate the law and that they state and lay out on the re-  
13 cord, so to speak, all of the details of the alleged scheme.  
14 Your common sense will tell you that when men and women  
15 undertake to enter into a criminal conspiracy, they aren't  
16 interested in having their arrangements or their scheme  
17 known to outsiders. Therefore, commonly you will encounter  
18 situations where a lot of the agreement is left to  
19 unexpressed understandings between the parties.

20 In determining whether or not there has been an  
21 unlawful scheme, as here alleged in Count 1, you should  
22 judge the acts and conduct as shown from the evidence of  
23 each alleged member thereof.

24 You might keep in mind another old adage  
25 here, that sometimes actions speak louder than words.

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In other words, you should consider the proof as a whole of the transactions, the conversations and the events, and, viewing the mosaic of all of that evidence, make a determination whether or not there was, in fact, a scheme to traffic in sales or offers of sales of TWP, concealing the true facts of what was going on for the purposes of profiting by sales and from concealing from investors what was really going on in this underwriting or distributing of that particular issuance of stock.

Tk 8B 1

gab-1

2 Let me make one other point. A conspiracy in  
3 the law is recognized to continue for as long as the co-  
4 conspirators are shown from the evidence to have wanted it  
5 to continue.

6 Actually I think the Government is pretty much  
7 willing to concede that notwithstanding the allegations  
8 of the indictment, this conspiracy continued up to a point  
9 when everybody was pretty much aware that there was a Govern-  
10 mental investigation into this affair. You certainly are  
11 entitled to consider the proofs as a whole. If you determine  
12 that the conspiracy ended before the date of this indictment  
13 filing, which, as you know, was in February of this year,  
14 that wouldn't necessarily mean that you would have to acquit  
15 the defendants.

16 As long as you find that a conspiracy existed,  
17 in fact, for a substantial period within the alleged beginning  
18 date and the alleged ending date, that would be sufficient .

19 However, there is another time point that I want  
20 to instruct you about, and that is this: Knowing as we do  
21 that the indictment was filed on or about February 15, 1974,  
22 it is necessary in order to support any conviction here that  
23 you be satisfied that at least one overt act occurred after  
24 February 14, 1969.

25 Now I turn to the second essential element, and

gab-2

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that is proof beyond a reasonable doubt of knowing and willing participation in this scheme.

Once you are satisfied if, indeed, you are, that the Government has proved the existence of the conspiracy substantially as charged, you then have to satisfy yourself as to whether or not either one of these defendants on trial, Stoller and Frank, was a knowing and willing member thereof that is, something more than an innocent friend or acquaintance of the other conspirators.

In determining whether a defendant became a member knowingly and willingly in this conspiracy, you must not only determine whether he participated to any extent, but you have got to also determine and be satisfied that he did so with knowledge, substantial knowledge, of the objectives of the scheme.

In other words, ask yourselves, if you determine that the defendant did join, did he do so with awareness at least of the basic aims and purposes of the scheme?

Now, obviously when I say joined the conspiracy, I don't mean the proof has to show that the defendant in question formally joined and said I hereby join and I am in it for all purposes. Obviously we wouldn't expect any evidence of that kind. What I do mean, however, is that you must be satisfied from the totality of the proofs and most importantly from evidence which shows what the defendant himself

1 gab-3

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2 did or what the defendant wrote or what he said. That  
3 is the type of evidence to focus upon to determine whether  
4 or not a given defendant knowingly and wilfully joined  
5 this conspiracy.

6 To put the matter in blunt bald practical terms,  
7 in order to find either Frank or Stoller or both of them  
8 guilty here, you have got to be satisfied that the defendant  
9 in question knew full well that this was a scheme whereby  
10 Stoller, Allen and D'Onofrio would take down 14,900 shares  
11 of TWP, put them in the hands of nominees and friends, buy  
12 them back from these nominees at a modest profit of about  
13 a dollar and a half per share to these nominees and friends,  
14 then park these securities in coded accounts in Bank Hofmann  
15 and then have Bank Hofmann resell the securities to  
16 Weissinger and Bonavia and then finally thereafter to assist  
17 Bonavia and Weissinger in disposing of those shares at a  
18 profit or, at the very least, without any substantial losses  
19 to members of the public.

20 If you are not satisfied that Stoller and Frank  
21 or one of them knew that this was really what was going on,  
22 then you should acquit that particular defendant.

23 I should point out, however, that you don't  
24 have to find that a given defendant or co-conspirator knew  
25 absolutely all of the details and all of the activities and

1 gab-4

2 all of the statements of the rest of the co-conspirators.  
3 It is sufficient, as I have already said, that he know  
4 essentially what was the scheme and what were the objects  
5 and that he be shown by his own acts and his own declarations  
6 to have purposely, knowingly and wilfully joined the scheme  
7 and done something to see that the scheme succeeded.

8 Let me pause here and emphasize to you, as I am  
9 sure you already understand, that the Government doesn't  
10 content that Stoller and Allen joined this scheme at the  
11 same time or that they had the same roles. Quite obviously  
12 the Government contends something else.

13 The Government contends in respect to Stoller,  
14 for example, that he joined the scheme early on, when  
15 D'Onofrio came to him and said let's do another deal, told  
16 him about TPW and then, according to D'Onofrio, they agreed  
17 to take down 14,900 shares and so on, as I have already  
18 described.

19 Nobody, least of all the prosecution, accuses  
20 Frank of having come in at that time. Rather, the Government  
21 contends that they proved that Frank came in at a later date  
22 when the original three encountered some difficulties in  
23 implementing their scheme and that they went to him to get  
24 advice as to how to conceal what they were really up to and  
25 how to handle these so-called nominees and friends' accounts



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2 when Emanuel Deetjen began asking embarrassing questions  
3 and pointed questions about proof of ownership of TWP shares  
4 by the nominees, Bank Hofmann, etc.

5 And thereafter, according to the Government,  
6 they claim that they have shown that there was an understanding  
7 that Frank would get some money or some stock or both for  
8 his efforts, and that as a result, Frank continued in this  
9 scheme to assist concealing the operations as they went  
10 along and then even, as I understood the Government, they  
11 contend when this so-called crank letter came in to the SEC  
12 with a copy to Bud Moss or vice-versa and people began to  
13 make some inquiries, Frank's role then was to assist in  
14 concealing what was going on.

15 Obviously Stoller and Frank-both deny these  
16 claims of their separate roles.

17 The point I am trying to make is, it isn't  
18 necessary for the proofs to show that each co-conspirator  
19 knew exactly what the other was doing at all times or that  
20 they performed the same roles or that they were even in the  
21 conspiracy for exactly the same length of time. That isn't  
22 necessary.

23 I repeat and emphasize, however, you have got to  
24  
25



1  
2 be satisfied on the basis of evidence showing what a given  
3 defendant said or declared or did. Don't rely on evidence  
4 showing what other persons, including co-conspirators,  
5 were doing or saying. Just rely on that kind of direct  
6 evidence in determining this hotly disputed issue as to  
7 whether or not these defendants, Stoller and Frank, knowingly  
8 and purposely joined this scheme knowing essentially what it  
9 was all about.

10 It is true, I might say, under the law once  
11 you have determined that a given defendant based on evidence  
12 showing what he did and what he said knowingly joined this  
13 conspiracy, thereafter you can consider evidence of what  
14 other people were doing as binding upon him because the law  
15 recognizes that once a man knowingly joins a conspiracy, he  
16 becomes a partner of everybody else and his partners'  
17 activities bind him thereafter

18 I come now to overt acts. You remember when  
19 I read the conspiracy statute, one of the elements which  
20 that statute mandated to be proved was proof of at least  
21 one overt act, meaning by that an act designed and done with  
22 the expressed purpose of effectuating or helping along the  
23 criminal scheme alleged.

24 Now, standing alone, and viewed  
25 simply and on the surface, an overt act can be as simple

1 gab-7

2 and innocent as a man picking up a telephone and dialing and  
3 making a call or stepping into an automobile. However,  
4 that is not to say that you don't have to be satisfied that  
5 this is an act intended by the actor to effectuate or  
6 help along the conspiracy.

7 That you do under the law.

8 Therefore, if you determine that, for example,  
9 Stoller had a conversation on such a day or that D'Onofrio  
10 entered a building at West 86th Street on such a day, you have  
11 got to be satisfied not only did that actually occur, but that,  
12 furthermore, the actor, whoever he may have been, as alleged  
13 in these overt acts intended what he was doing to assist  
14 the conspiracy or, as the law sometimes puts it, effectuate  
15 the object or objects of the scheme here charged.

16 Since the law requires no more than proof of  
17 one overt act, you would be entitled to convict one or both  
18 defendants, so long, of course, as you found the first two  
19 essential elements proved beyond a reasonable doubt,  
20 if you find further that only one overt act is proved.

21 The Government contends that all of the overt  
22 acts which are not stricken and which I read to you this  
23 morning they have proved. Remember, you really only  
24 have to find one overt act proved in order to support conviction.  
25

1 gab-8

2 One thing I want to caution you about. It seems  
3 very simple and it may be already clear to you, but it is  
4 important. The indictment charges and the Government stands  
5 and falls on this, as they know, a single conspiracy.  
6 In other words, a single scheme to trade in TWP stock with a  
7 scheme, an artifice to defraud members of the public who  
8 had purchased that stock.

9 Now, it is perfectly proper to show, as the Government  
10 has here alleged, a scheme with one or more purposes. On  
11 the other hand, if you were to determine that the Government's  
12 evidence proved not one conspiracy as alleged, but two or  
13 more separate conspiracies involving different people, why,  
14 then you would be obliged to acquit these defendants. The  
15 reason for that is, as I have already stated in very  
16 simple terms, this indictment, Count 1, charges one integrated  
17 scheme, and these two defendants on trial are named as  
18 co-conspirators in that scheme.

19 Therefore, it would be manifestly wrong, and  
20 the law recognizes this, if you were to determine that all  
21 that has been proved here is really two or three separate  
22 conspiracies of a somewhat different nature, then you would  
23 be obliged to acquit the defendants even though you might  
24 say that, well, one or both of them might have been involved  
25 in somewhat a different conspiracy than here alleged.

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2 I think this is a good point to break for  
3 lunch.

4 I propose afterwards to take up the statutes  
5 which are pertinent to Count 1 and, indeed, they are perti-  
6 nent to Counts 2 through and including 10.

7 Again, unfortunately, the statutes themselves  
8 are rather lengthy and, more than that, there are certain  
9 other grounds that I have to cover with you that are fairly  
10 lengthy.

11 I think this is a good time to stop. We are  
12 going to have to go out to lunch and I want you to put the  
13 case out of your minds. Don't discuss my charge, don't  
14 discuss anything about the case. Relax and enjoy your  
15 lunch. Pull a veil over your minds, if you will, until we  
16 return. Since we did lose some time through nobody's fault  
17 really here at all, I am going to ask that you return at  
18 five to 2:00. It is now five to 1:00. Let's see if we can't  
19 get a luncheon inside of us and pick up 15 minutes at least  
20 by coming back at five to 2:00.

21 (Luncheon recess.)

22 ----

23  
24  
25  
End 8B

Tk 1A

qb-1

AFTERNOON SESSION  
1:55 P.M.

THE COURT: When we broke for lunch, ladies and gentlemen of the jury, I was about to take up with you the statutes which we have been discussing in general terms heretofore, that is the two securities laws provisions and the mail fraud provision.

As you know, Count 1 charges that one of the objectives of the scheme or conspiracy was to violate Section 17 of the 1933 Act.

Count 2 of the statute charges a substantive violation of that Act.

Let me read that Act in significant part as follows:

"It shall be unlawful for any person to engage in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly, (1), to employ any device, scheme or artifice to defraud or, (2), to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made not misleading or (3), to engage in any transaction, practice or course of business which operates

or would operate as a fraud or deceive upon the purchaser."

Thus, as you can see, the gist of this section is that it is unlawful in the offer or sale of a security such as stock to employ the mails or other means of interstate commerce or interstate communication in furtherance of any fraudulent scheme, artifice, practice or course of business or in any attempt to obtain money through material misrepresentations or the omissions of any material fact or facts which would be necessary to make the information actually given not misleading to the person who received such information.

Incidentally, in this regard false representations mean any representations regarding present or past facts, any opinion expressed or any predictions as to the future which are not made honestly or in good faith or which are made with obviously reckless disregard or indifference to the point of whether or not the statements are true or false.

Before I take up the other statutes, because I have already pointed out that Count 2 charges a substantive violation of Section 17 which I just read, it might be convenient if I were to pause here to take up Count 2 and instruct you as to the essential elements as to Count 2 in which both Stoller and Frank are named as defendants.

Count 2 in significant part alleges as follows:

qb-3

1 qb-3  
2 "That from on or about June 1968 up until the  
3 filing of this indictment in this judicial district and  
4 elsewhere the defendant Stoller, Frank, Allen, Herbert  
5 and others unlawfully, wilfully and knowingly in the offer  
6 and sale of securities, to wit, the common stock of TWP by  
7 the use of the means and instruments of transportation and  
8 communication in interstate commerce and by use of the mails  
9 directly and indirectly did (a), employ a device, scheme  
10 an artifice to defraud, (b), obtain money and property  
11 by means of untrue statements of material facts necessary  
12 in order to make the statements made in the light of the cir-  
13 cumstances under which they were made not misleading and (c),  
14 engage in transactions, practices and courses of business  
15 which would and did operate as a fraud and deceit upon pur-  
16 chasers of said securities and other persons whom the said  
17 defendants directly and indirectly attempted to induce to pur-  
18 chase said securities."

19 Count 2 goes on to repeat and reallege all of the  
20 paragraphs in Paragraph 5 of Count 1, which I read to you this  
21 morning, and says that these are the means by which the  
22 defendants committed the course of conduct or offense set forth  
23 in the first part of Count 2, which I just read to you.

24 Count 2 then goes on to allege, "That on or about  
25 the date set forth in Count 2 in this judicial district, the



defendants Stoller, Frank, Allen and Herbert unlawfully, wilfully and knowingly did use and cause to be used the means and instruments of transportation and communications in interstate commerce and the use of the mails pursuant to and in furtherance of the scheme heretofore described."

Then there are two mailings. The first is one dated April 25, 1969, and the addressee is Mrs. Francis Wien, Jersey City, and an address stated there, and the mail matter is stated to be a confirmation of purchase of 70 shares of Training With the Pros common stock.

The second mailing, the addressee is said to be Miss Nancy Dinam at an address in Valley Stream, New York, on May 21, 1969, and the mail matter was a confirmation of purchase of 100 shares of Training With the Pros, common stock.

In order to find a given defendant guilty under Count 2, you must be persuaded beyond a reasonable doubt from all of the evidence that, first, a given defendant in connection with the offer or sale of a TWP securities engaged in a scheme to defraud or to obtain money and property by means of untrue statements of material facts or omitted to state facts which were necessary to make such statements as were made not misleading or engaged in any transaction, practice or course of business which operated or would

1 qb-5

2 operate as a fraud or deceit upon purchasers of TWP stock,  
3 or did aid and abet another to do any of the above.

4 Second, you must be satisfied if you find that  
5 the defendant did any one of these things, that he did so  
6 wilfully and knowingly and, third, you must be satisfied  
7 beyond a reasonable doubt that either the defendant used or  
8 caused others to use the mails or some means of communica-  
9 tion between the States in furtherance of the scheme.

10 So, in sum, what is involved here, in very  
11 brief, simplistic terms, is that Mr. Stoller and Mr. Frank are  
12 accused of having engaged in a scheme or artifice to defraud  
13 and, beyond that, have specifically misled a certain broker  
14 or brokers by misleading statements, factually inaccurate  
15 statements, and purposely so to, in turn, cause the customers  
16 of these brokers to buy the stock through these brokers  
17 and that as a result of these purchases, particularly those  
18 described in Count 2, which I just read to you, causing con-  
19 firmations of the purchases to be sent through the mails to  
20 the purchasers or clients of the brokers in question.

21 This brings up the subject of certain brokers  
22 who are sometimes referred to in this trial as the Elinors.  
23 You will remember that the Government alleges that in April  
24 and May Stoller and Allen made certain telephone calls to  
25 certain brokers who appeared here as witnesses and that as

1 a result of these phone calls in which either spontaneously  
2 or in response to questions by the broker to Stoller and/or  
3 Allen, the latter touted TWP, and the brokers then turned  
4 around and sold shares of TWP to one or more customers of  
5 theirs, and that as a result of that inevitably, as the  
6 Government contends, anybody with the experience of Stoller  
7 and Allen would know and indeed of Mr. Frank, for that  
8 matter, there had to be mail confirmations in the regular  
9 course of business to these particular purchasers.  
10

11 Another shorthand way of putting this is to say  
12 that here is an instance where the Government claims that  
13 they have proved that the scheme or artifice which the de-  
14 fendants are accused of participating in actually culminated  
15 in successful sales of shares based upon the fraudulent  
16 scheme and specifically based upon misrepresentations of fact  
17 and omissions of material fact to members of the public.  
18

19 In arriving at a determination of this particular  
20 charge there is raised inevitably for your consideration the  
21 question of whether or not it was material to inform the  
22 investing public, that would be brokers or potential buyers,  
23 or both, that Snoller, Allen and D'Onofrio should have been  
24 listed as underwriters in the offering circular of the  
25 TWP issuance of 42,000 shares of common stock. The Govern-  
ment contends that from all of the evidence it has proved

qb-7

beyond a reasonable doubt that these three men were, in effect, and in actuality statutory underwriters and that that fact should have been disclosed in the offering circular.

For this reason the Government has argued among other things, for example, that if the public had been told that these men were really underwriters and that they were taking down 14,900 shares of common stock under the circumstances which the Government claims they have proved that they did,

this would have been highly material and relevant information for a potential investor or a broker dealing with investors to know before the investor made a determination to purchase any shares, no matter how many, of TWP stock thereafter. The Government goes further and argues that it may well have been material and they would seek to persuade you that it was material for not only these men to identify themselves in the offering circular as underwriters, but to point out that they were taking the 14,900 shares by purchase from their nominees and placing these shares in bank accounts in Switzerland and that they were then intending to sell them to Bonavia and Weissinger.

End 1A

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Well, whatever the facts may be, as argued by the parties, keep in mind that a material fact in the law is one to which a reasonably prudent investor would attach importance in deciding whether or not to buy shares in stock such as TWP.

Keep in mind also that in a Regulation A stock offering, such as was implemented here in respect to TWP, the offering circular should under SEC regulations disclose the names of all underwriters because the SEC deems such information to constitute a material fact which a potential investor should know about in order to make his decision whether or not to buy that particular stock. Therefore, it is for this reason that the government argues that the omission simply of the fact, if it is a fact in your judgment, that Smoller, Allen and D'Onofrio were underwriters, makes the offering circular misleading and that this was done intentionally by D'Onofrio to the full knowledge and intent of all the others with the intent to deceive and defraud potential purchasers.

Since you have to decide whether or not the government has proved that these men or any one of them was an underwriter and that that fact was not disclosed, it is necessary for you to know what the law conceives an underwriter to be.

1                   jqbr  
2                               Let me read to you the statutory definition.  
3       I am reading here incidentally from Section 2 of the  
4       1933 Securities Act.   "The term underwriter means any  
5       person who has purchased from an issuer with a view to or  
6       offers or sells for an issuer in connection with the distri-  
7       bution of any security or participates or has a direct or  
8       indirect participation in any such undertaking or participates  
9       or has a participation in the direct or indirect underwriting  
10      of any such undertaking."

11                               As you know, the government says that the proof  
12      that they have produced here shows that D'Onofrio dealt with  
13      Moss and in effect offered to underwrite the issue for him and  
14      not only that, after D'Onofrio got Moss' agreement to permit  
15      D'Onofrio to aid in the issuance, then he, D'Onofrio, went  
16      to Allen and Stoller and said "Let's do another deal" and  
17      that D'Onofrio controlled the contents and the terms set forth  
18      in the offering circular and, with the help of Pfingst and per-  
19      haps others, the offering circular was put through the SEC  
20      and approved by the SEC, all with the knowledge and approval  
21      of Stoller and Allen.

22                               The government does nt contend that Frank knew  
23      about this and was directly involved at the time in the  
24      preparatio of the offering circular or the conversations  
25      before February 4th   or even immediately   thereafter.



1 jgbr

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2 Rather, the government contends that Frank came into the  
3 picture later, was filled in as to what happened, and then and  
4 thereafter became an aider and abetter to see to it that the  
5 scheme, as alleged, and the activities as alleged in Count 2  
6 and indeed all these other counts for that matter, were  
7 effectuated. Needless to say, Seoller denied that he was  
8 a statutory or any other kind of underwriter. He claims that  
9 this was all done without his knowledge or doing. As far as  
10 Frank is concerned, he denies that he knew anything about the  
11 essentials of the scheme or that he did anything to aid and  
12 abet any of the substantive activities, for example, such as  
13 those charged in Count 2 and for that matter Counts 3 through  
14 and including 10.

15 Now, I think it is clear from what I have  
16 already said that obviously the issuer in this case, and I  
17 don't think there is any contest on this at all, is the  
18 company known as TWP. Thus the question for you to decide is  
19 whether Stoller, Allen and D'Onofrio should have been listed  
20 as underwriters for the TWP stock offering.

21 As you know, among the other contentions of the  
22 government, there is the additional detailed one that the  
23 three men controlled approximately 30 per cent and indeed a  
24 little bit more of the 42,000 shares and that they already had  
25



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agreed to take them down and control them even before February 4, 1969. You know further that the government contends that because the SEC in approving the offering circular and other details of the stock offering laid down the guideline that no one individual or firm would purchase more than 1,000 shares of this issue, the three men took the precaution of seeing to it that they got friends and nominees to join with them in the original acquisition at the offering price of \$7 per share; but that really this was a phony transaction in regard to the nominees and friends because there was an understanding, certainly on the part of Stoller, Allen and D'Onofrio; that, very soon they would take back these shares which really were intended to be theirs, pay their friends and nominees a relatively modest markup of a point and a half per share so that those people would be paid off for their trouble; and that then they would turn around and take their total of 14,900 shares, sell them to Weissinger and Bonavia, who are apparently longstanding accounts of Stoller and Allen, or one of them, at an materially enhanced price after they had first parked the shares for a while in Bank Hofmann. And then finally, as you know, the step was they tried to bail Weissinger and Bonavia out by touting the stock to brokers called the

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2 Elinors.

3 Well, if you find this activity occurred, and  
4 specifically if you find that these men fit the legal  
5 description from all the facts in the case as underwriters  
6 and performed the underwriters function and if you find that  
7 the existence of them or one of them as underwriter was not  
8 disclosed in the offering circular, then you would be  
9 entitled to consider and find, if you choose to do so on the  
10 evidence, that there is proof beyond a reasonable doubt that  
11 the defendant specifically and successfully caused material  
12 fact or facts to be omitted from the offering circular there  
13 by misleading the public, that is to say prospective  
14 investors in the public.

15 Let me pause here and take up a couple of  
16 collateral matters in a sense but nevertheless apparently very  
17 important to the parties.

18 I think it should be said clearly by this  
19 Court that there is nothing illegal as such in the use of  
20 nominees. You heard that discussed and bruited about  
21 frequently in our trial. I instruct you that as a matter  
22 of law, standing alone the use of nominees in stock  
23 transactions is not illegal under federal law or indeed  
24 for any other law that I know of.

25 Second of all, I point out and instruct you

1  
2 that there is nothing illegal standing alone for an  
3 American citizen to have what has been called here a secret  
4 coded Swiss bank account. I think most of you know this  
5 anyhow but that is the law. And indeed you must understand  
6 that such secret coded accounts are permissible under  
7 accounts are permissible under Swiss law.

8 The government, I believe and trust, understands  
9 this and, therefore they are not arguing to you that if you  
10 simply find that coded accounts were used by one or more of  
11 these defendants or their alleged co-conspirators or if they  
12 used nominees that that alone proves they were guilty of  
13 any crime. I don't believe the government makes any such  
14 contention and if they do they are clearly wrong under the  
15 law. Rather, what the government does contend is that the  
16 usage of nominees and the usage of these Swiss bank accounts  
17 under coded names and so on, and the transactions which took  
18 place in and out of these accounts, were really designed to  
19 conceal the nature of the essential fraud; that the three  
20 men wanted to cover up their tracks; that Allen, Stoller and  
21 D'Onofrio were really nothing more or less than the underwriters  
22 putting this deal together for their own selfish gain; and that  
23 they were going to blow off this stock first through the accounts  
24 of Weissinger and Bonavia and then eventually they were <sup>going to</sup> finish

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2 fin that job by touting the stock in order to bail out  
3 Weissinger and Bonavia by sales to the public thorough  
4 the Elinors or the brokers they had contacts with.  
5 You know all of that.

6 t2a pm ga Now, if you find that nominee accounts were used  
7 and if you find that nominee accounts were used as a machine  
8 or engine or procedure for helping to conceal a scheme or  
9 artifice to defraud, you are entitled to consider that  
10 evidence to that end. Similarly you are entitled to  
11 consider the evidence, if you find it's been proved, of usage  
12 of Swiss bank accounts.

13 But keep in mind, as the defendants have cor-  
14 rectly argued in this respect, standing alone neither the  
15 use of nominees nor the use of Swiss bank accounts by  
16 American nationals is a violation of any federal law.

17 Now, I turn to another statute, which is the  
18 second statute which the government contends in Count 1  
19 the defendants conspired to violate. This statute  
20 underpins Counts 3, 4, 5 and 6 of this indictment, which  
21 are four separate substantive counts.

22 The statute here involved, which I am going  
23 to read to you in significant parts, is known sometimes as  
24 Section 10(b) of the Securities and Exchange Act of 1934.  
25 It reads and I quote:

2 "It shall be unlawful for any person, directly  
3 or indirectly, by the use of any means or instrumentality  
4 of interstate commerce or of the mails to use or employ  
5 in connection with the purchase or sale of any security  
6 registered on a national Securities exchange or any security  
7 not so registered any manipulative or deceptive device or  
8 contrivance in contravention of such rules and regulations  
9 as the Securities and Exchange Commission may prescribe  
10 as necessary or appropriate in the public interest or for the  
11 protection of investors."

12 Now, following the enactment of this particular  
13 section of the law, the SEC, as it was entitled to by the  
14 law, promulgated a rule or regulation which lawyers call  
15 Rule 10b-5.

16 Rule 10b-5 reads in significant part as fol-  
17 lows:

18 "It shall be unlawful for any person, directly  
19 or indirectly, by the use of any means or instrumentality  
20 of interstate commerce or of the mails,

21 "1, to employ any device, scheme or artifice  
22 to defraud.

23 "2, to make any untrue statement of a material  
24 fact or to omit to state a material fact necessary in order  
25 to make the statements actually made in the light of the

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2 circumstances under which they were not misleading or,

3 "3, to engage in any act, practice or course of  
4 business which operates or would operate as a fraud or deceit  
5 upon this person in connection with the purchase or sale of  
6 any security".

7 Now, as you can see, this regulation or rule  
8 tracks very closely, certainly Section 10(b) of the 1934  
9 Act and to a significant extent the 1933 Act, Section 17  
10 thereof, which I read to you.

11 Keep in mind that it is Section 10(b) and  
12 Rule 10b-5 which underpin the allegations in Counts 3 to  
13 and including 6 of this indictment.

14 Let me read you Counts 3 through 6.

15 Here it is alleged that "From the 1st day of  
16 June 1968, up to and including the date of the filing of this  
17 indictment here in this judicial district and elsewhere, the  
18 defendants Stoller, Frank, Allen, Herbert and others unlawfully,  
19 wilfully and knowingly did, directly and indirectly, by use  
20 means and instrumentalities of interstate commerce and  
21 the mails, use and employ in connection with the purchase  
22 and and sales of the common stock of TWP manipulative and  
23 deceptive devices and contrivances in contravention of Rule  
24 10b-5. Here again Counts 3 through 6 go on to repeat and  
25 reallege the means paragraph,

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2 Paragraph 5, which I read you in Count 1, and then  
3 states these are the means by which the defendants com-  
4 mitted these particular offenses charged in Counts 3  
5 to and including 6.

6  
7 And finally it is alleged as follows, that on  
8 or about the dates hereinafter set forth in Counts 3  
9 through 6 in this judicial district said defendants unlaw-  
10 fully, wilfully and knowingly did use and cause to be used  
11 means and instrumentalities of interstate commerce and the  
12 mails pursuant to and in furtherance of the scheme alleged  
13 in Paragraph 1 of these counts by causing confirmations of  
14 purchase of common stock of TWP to be sent through the mails  
15 to the persons hereinafter set forth.

16 Now, Count 3 alleges a mailing of a confirmation  
17 of 100 shares of TWP. The addressees are Mr. Martin Frank  
18 and Mrs. Gizella Frank in Jackson Heights, New York on April  
19 17, 1969. And unless I am corrected by counsel, I think  
20 all agree that this particular Mr. and Mrs. Frank are not  
21 the Mr. Frank who is a defendant in this case and have  
22 nothing in the way of relationship with him at all in that  
23 sense.

24 Count 4 alleges a mailing of a confirmation  
25 of a purchase of 100 shares of TWP addressed to Michael  
Howard, here an address on 8th Avenue in Manhattan, on April



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2 17, 1969.

3 Count 5 alleges a mailing of a confirmation of  
4 the purchase of 50 shares of TWP. The addressee is Mrs.  
5 Sally Turner in Paintsville, Kentucky on May 23, 1969.

6 Finally Count 6 alleges a mailing of a confirma-  
7 tion of 50 shares of TWP common stock. The addressee is  
8 Miss Rose Hludzenski in Oceanside, New York. The date  
9 is May 23, 1969.

10 Now, here again as you can understand from what  
11 has already been said by me, the claim of the government  
12 is that these particular confirmations were mailed after  
13 certain false and misleading statements in the direct  
14 sense and perhaps by way of omissions of material facts, in  
15 conversations between Stoller and/or Allen with the knowledge  
16 of each other to certain brokers they knew, as a result of  
17 which those brokers sold at what the government contends  
18 is an inflated price of TWP to customers of these brokers.  
19 And you remember the brokers who came in and testified  
20 about the very individuals whose names appear here as the  
21 addressees. I don't have to remind you of that.

22 The government says, of course, there is no  
23 proof on their part that Seoller or Frank or, indeed, any  
24 other co-conspirator actually mailed these matters themselves.  
25 The theory of the government is that particularly with

2 the sophistication and knowledge of the securities business  
3 that the defendants on trial and the other conspirators had,  
4 they would inevitably know that once any sales were made,  
5 once they got these brokers interested in the stock, there  
6 would be necessarily in the regular course of business  
7 mailed confirmations after the purchases by these customers.

8 Let me set forth the essential elements which  
9 you must find proved beyond a reasonable doubt before you can  
10 convict either or both defendants under Counts 3 through 6.

11 First, proof beyond a reasonable doubt that the  
12 defendant in question knowingly and wilfully in connection  
13 with the purchase or sale of TWP stock did any one or more  
14 of the following:

15 (1) employ any device, scheme or artifice to  
16 defraud.

17 (2) make any untrue statement of material fact  
18 or omit to state a material fact necessary in order to make  
19 the statements made in the light of the circumstances under  
20 which they were made not misleading; or,

21 (3) engage in any act, practice or course of  
22 business which operates or would operate a fraud or deceit  
23 upon any person.

24 Second, that such defendant either used or aided  
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or abetted in or caused the usage of the mails as alleged.  
That is the mailing of confirmations to the customers.

I have been talking a good deal, before  
lunch and after, about this statutory concept of scheme or  
artifice to defraud.

As you know, it permeates all of these counts.  
Let me define for you what is meant by this phrase a  
scheme or artifice to defraud.

1 gab-1 3567  
2 First of all, a scheme or artifice very simply  
3 is a plan to accomplish some object or goal.

4 Fraud is a term which really embraces all the  
5 many, many means which a human being can devise and resort  
6 to in order to gain advantage over another by misrepresenta-  
7 tion or omission of an important or material fact in order  
8 to get that other person to do something or not do something.

9 One way of achieving a fraud of course in  
10 a general sense is to make knowing flagrant misrepresenta-  
11 tions of fact about a commodity or an object or a share of  
12 stock or a group of shares of stock or whatever.

13 Another thing to do would be to say certain  
14 things which were important, but purposely neglect,  
15 for the purpose of misleading the individual, to state some-  
16 thing else that was very important.

17 In other words, to sum it up, a scheme to  
18 defraud or a scheme or artifice to defraud is simply  
19 a plan to obtain some advantage or value by trick or deceit,  
20 by misrepresentation or plain wilful misstatement of facts.

21 Since it is the sale of securities with which  
22 we are here dealing, in determining whether or not there was  
23 a scheme or artifice to defraud for the purpose of this  
24 statute and other statutes, you should consider whether  
25 or not there was a scheme to defraud as alleged here in all

1 of these counts and which I have summarized.  
2 as contended by the Government on several occasions already.  
3

4 Then if you were to determine that one of the  
5 defendants or both of them participated in this scheme  
6 knowingly and wilfully and that thereafter the mails were  
7 used to send out these confirmations, that would be suf-  
8 ficient even though the defendant in question didn't actually  
9 do the mailing himself.

10 Now, while we are discussing a scheme or arti-  
11 fice to defraud, I believe that it is one of the defenses  
12 of Mr. Stoller, for example, that assuming that you were to  
13 believe that he called or that Allen called with his know-  
14 ledge any of these brokers they knew, that he didn't  
15 misrepresent anything and that he didn't omit anything  
16 important and that he was proceeding in good faith at the  
17 time because he honestly believed that TWP was a good  
18 stock and that it had appreciation value for the future.

19 You may remember that some of the brokers came  
20 in and testified in substance, at least as I recall it,  
21 that Stoller and Allen on separate occasions said to one  
22 or more of them that they thought TWP was a good stock.

23 Confining ourselves to the question of whether  
24 or not in these telephone calls or perhaps face to face  
25 conversations, whether or not Stoller, for example, made

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1 misrepresentations and thus committed a fraud upon these  
2 brokers and their customers, you certainly should consider  
3 this defense argument, at least as I understand it to be  
4 made, and to determine whether or not he was acting in  
5 good faith.  
6

7 Now, if you find that he honestly believed that  
8 TWP was a good stock and that it did have reasonable chance  
9 of appreciating in value or going up in price, whatever  
10 seems relevant in the context of the conversations as you  
11 remember them, then, of course, he would not be guilty of  
12 making factual misrepresentations or omitting to state  
13 material facts.

14 Therefore, you should consider that point, too,  
15 in this context and in other contexts of this case.

16 However, it won't be sufficient if all that  
17 Stoller had on his mind was that he really thought that maybe  
18 with a little luck the stock would continue to go up in  
19 price or that no one would lose any money. That presents  
20 another problem.

21 If you were to determine that Stoller made  
22 other fraudulent misstatements or if you were to determine  
23 that he wilfully and purposely omitted telling the brokers  
24 material facts which they and their clients ought to  
25 consider, the added fact, if it were such, that he really

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1 believed that no matter what happened ultimately people  
2 who bought TWP wouldn't lose money, that in itself wouldn't be  
3 a sufficient defense here.

4 Now, I also should point out to you that  
5 under the law it is not necessary for the prosecution to  
6 bring in people to say, look, we were customers of these  
7 brokers, we relied on what they told us and we suffered  
8 damages when we bought and then later tried to sell TWP.

9 The Government does not have to bring in such  
10 proof.

11 It is enough if the **proof** shows beyond a reason-  
12 able doubt that the false statements or the wilful omission  
13 of material statements were made with the expectation that  
14 they would be relied on by the brokers and customers.

15 Going to the second essential element, that  
16 is use of the mails again, let me point out to you it is  
17 also unnecessary for the Government to prove that these  
18 four named customers of the brokers actually received these  
19 confirmations. It is enough if the Government proves to  
20 your satisfaction that the mailings were actually made.  
21 Thereafter, if by some chance the mail service faltered  
22 and the confirmations didn't arrive, that is immaterial.

23 As I have already said, conceding, as the  
24 Government must, that they have no evidence of any one of  
25



1 these defendants actually doing the mailing, the point in  
2 the law is if a defendant took steps which he knew or could  
3 reasonably have foreseen at the time would reasonably  
4 and probably result in the use of the mails, that is  
5 sufficient proof of causing the mails to be used.  
6

7 I turn to the last remaining substantive  
8 counts, Counts 7 through 10. These three counts are based  
9 squarely on what lawyers call the general Federal Mail Fraud  
10 Statute.

11 Again, however, you will recognize some language  
12 which I have discussed with you in considerable length already.

13 The mail fraud statute, which is Section 1341 of  
14 the criminal code, provides in significant part as follows:

15 "Whoever having devised or intending to devise  
16 any scheme or artifice to defraud or for obtaining money  
17 by means of false or fraudulent pretenses, representations  
18 or promises for the purpose of executing such scheme or arti-  
19 fice or attempting so to do places in any post office or  
20 authorized depository for mail matter, any matter or thing  
21 whatsoever to be sent or delivered by the post office  
22 department, or knowingly causes to be delivered by mail  
23 according to the direction thereon any such matter or thing,  
24 shall be guilty of a crime."  
25

In Counts 7 through 10, Paragraph 1 alleges

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2 as follows, that "From on or about the 1st day of June,  
3 1968, up to the date of the filing of the indictment in this  
4 judicial district, defendant Stoller, Frank, Allen, Herbert  
5 and others unlawfully, wilfully and knowingly did devise  
6 and intend to devise a scheme to defraud purchasers of the  
7 common stock of TWP and to obtain money and property from  
8 said persons by means of false and fraudulent pretenses,  
9 representations and promises, and for the purpose of executing  
10 said scheme and artifice to defraud and attempting so to  
11 do, did place and cause to be placed in post offices and  
12 authorized depositories for mail matter, and did cause to be  
13 delivered by mail, according to the directions thereon,  
14 certain matters to be sent and delivered by the post office  
15 department as more particularly set forth below."

16 Then in Paragraph 2 here the indictment repeats  
17 the means paragraph once again, obviously because the means  
18 paragraph in Count 1, as you well know, by this time,  
19 sets forth with some specificity the alleged scheme or  
20 artifice to defraud.

21 And then finally these counts allege as follows,  
22 that "On or about the dates hereinafter set forth in  
23 Counts 7 through 10, the defendants unlawfully, wilfully  
24 and knowingly did cause to be placed in post offices and  
25 authorized depositories for mail, and did cause to be

2 delivered by mail by the post office department according  
3 to the direction thereon, to the persons hereinafter set  
4 forth, the matter hereinafter set forth."

5 Count 7 charges a mailing of a confirmation of  
6 a purchase of 100 shares of TWP to Mrs. Elinor Wien, Jersey  
7 City, New Jersey, and the date of the mailing is alleged  
8 to be April 15, 1969.

9 Count 8 alleges the confirmation of a purchase  
10 of 200 shares of TWP mailed to addressee, Mr. Milton Goldman,  
11 again at another address in Jersey City, New Jersey.

12 On April 15, 1969, Count 9 alleges the  
13 mailing of a confirmation of purchase of 100 shares of TWP  
14 stock to Mrs. Grace Heckman at a street address in Tuckahoe,  
15 New York. That is said to have taken place on or about  
16 April 17, 1969.

17 Last, Count 10 alleges the mailing of a confirma-  
18 tion of 30 shares of TWP common stock to Mrs. Elinor Wien  
19 again, this time on April 25, 1969, at her address in Jersey  
20 City, New Jersey.

21 Not surprisingly you will find that the essential  
22 elements which the Government must prove beyond a reasonable  
23 doubt here are as follows:

24 First, that a given defendant knowingly and  
25 wilfully devised or intended to devise a scheme or artifice

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2 to defraud or to obtain money by false or fraudulent pre-  
3 tenses, representations or promises as set forth in the  
4 indictment.

5 Second and last, that such defendant either  
6 used or caused the use of the mails as alleged in furtherance  
7 of the scheme.

8 Let me take up with you again and to an extent  
9 I am necessarily repeating myself, because some of this  
10 overlaps with what I have said already in respect to the  
11 earlier counts.

End 2B 12

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1           qb-1  
2           The alleged scheme or artifice, of course you know. You  
3           also know that the Government contends here again that  
4           before the brokers made these transactions with their  
5           customers Elinor Wien, Mr. Goldman and so on, that there  
6           were these conversations with Stoller and Allen with the  
7           knowledge of each other and the Government would go further  
8           and say that what was really stated there was a form of  
9           deceit with the intention to mislead as contemplated by the  
10          so-called mail fraud statute.

11                 Now, you all understand that a common variety  
12          of fraud is a direct lie.   However, again here let me  
13          emphasize a direct lie is not the only means of deceiving  
14          or intending to deceive another person.   Fraudulent  
15          representations, as are used in the mail fraud statute may  
16          be effected by deceitful statements or half truths or the  
17          concealment of material facts and the devising of a scheme  
18          for obtaining money by such statements or concealments.

19                 That would fit within the mail fraud statute,  
20          says the law.   So here again you can see that the similar  
21          arguments that have been made and discussed here before are  
22          made by the Government with respect to these particular  
23          counts, the so-called mail fraud counts.

24                 This is familiar ground now, I am sure, and this  
25          in some measure turns not only on the scheme or artifice

1 qb-2

2 which Count 1 in Paragraph 5 thereof describes, but the  
3 conversations over the phone to the broker inducing them  
4 to sell TWP to their customers.

5 The Government says that these were complete  
6 lies to some extent, and there were half truths in other  
7 extents and that the Stoller and/or Allen knew that these  
8 were lies or half truths, or misrepresentations when  
9 they talked to the brokers directly and when they answered  
10 certain questions put to them by the brokers as testified  
11 to here by the brokers at trial.

12 Again, as I pointed out, Stoller denies this  
13 and says that although he or Allen may have talked to  
14 brokers they only gave their honest opinions to the general  
15 effect that TWP was a good stock and they really believed  
16 that and that therefore they weren't guilty of outright lies  
17 or even half truths, they were just giving their honest  
18 opinions as they knew them.

19 This is sufficient, and I am not going into all  
20 the details of either the Government's arguments or  
21 Stoller's arguments on this, but you understand all these.  
22 This will bring into focus on the kinds of questions you  
23 have to decide under these, the so-called mail fraud counts.

24 I said earlier that the Government of course,  
25 doesn't contend, and indeed they have no evidence, that

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2 Martin Frank ever talked to any potential investor or indeed  
3 that he ever talked to any broker and tried to get him to  
4 purchase TWP shares for one of his customers or have one  
5 of his customers purchase TWP shares.

6 You all know that. Therefore, it is necessary  
7 for me to explain the theory of the Government as against  
8 Frank in all of these substantive counts, not only the mail  
9 counts here under discussion but Counts 2 through 6.

10 Here the Government is contending that Frank was  
11 an aider and abettor. There is another Federal statute  
12 which I will read to you in significant part. It simply  
13 states that whoever commits an offense against the United  
14 States or aids, abets, counsels, commands, induces or pro-  
15 cures its commission is punishable as a principal for the  
16 crime in question.

17 Therefore it is under this statute that the  
18 Government seeks to tie in the defendant Frank. I have  
19 already stated that the Government recognizes and argues  
20 to you that Frank came in on the scheme a little after  
21 D'Onofrio, Stoller and Allen. You know that the Government  
22 contends that the conspirators have been proven to have  
23 agreed at the request of Frank to pay him \$15,000, either  
24 in cash or in kind if he would aid them in implementing and  
25 covering up this scheme and the Government argues that an



2 experienced securities lawyer such as Frank knew full well  
3 that what he was going to be doing was aiding in parking  
4 these shares in Bank Hofmann, blowing them off, to use that  
5 dreadful expression, to Bonavia and Weissinger and then  
6 selling them or helping Bonavia and Weissinger dispose of  
7 their shares, hopefully at a slightly higher price to the  
8 general public.

9 Now the Government contends that the only  
10 reasonable inference from all of this, assuming you believe  
11 all this evidence, is that Frank well knew that he would be  
12 aiding and abetting eventually in that portion of the  
13 scheme where Seoller and Allen and D'Onofrio would call  
14 brokers and try to get those brokers to get their customers  
15 to buy TWP stock. And that, therefore, Frank is an aider  
16 and abettor in all of these counts because he expected to  
17 make some money as a result.

18 He knew or should have known that there would be  
19 fraudulent misstatements to the brokers and he knew the  
20 general outlines of the scheme and artifice to defraud  
21 because the co-conspirators, according to the Government,  
22 told them all about it so that he could assist them.

23 Getting to these bills of sale, you remember the  
24 series of Government Exhibits 21 through 31, which were  
25 sometimes referred to as receipts and they were sometimes

1 referred to as bills of sale by the lawyers, but you know  
2 what I am talking about.

3 Frank is the one who came up with the idea  
4 of usage of nominees. He is the one that notarized in blank  
5 these bills of sale and/or receipts, depending on how you  
6 choose to call them, and that he later on gave such other  
7 aid and comfort to the ongoing conspiracy, so the Government  
8 says.

9 Well, Frank's defense is of course quite differ-  
10 ent than the Government's view. Without intending to  
11 repeat all of Frank's arguments through his counsel,  
12 suffice it for me to say here very briefly that you know  
13 Frank to contend that surely he notarized these documents  
14 but he was simply acting, as he does apparently, as a  
15 notary public of the State of New York.

16 Incidentally, it might be that some of you would  
17 determine from some evidence in this case that Mr. Frank  
18 may have violated the notarial statutes of the State of New  
19 York. If you were to make that determination, please keep  
20 in mind in fairness to Mr. Frank that he is not accused here  
21 of simply violating the notarial statutes of New York.  
22 That would certainly be insufficient to hold him in this  
23 indictment. Rather, what the Government is contending  
24 here is, as you know, that he did all of this in order to  
25

get the rest of the conspirators beyond their immediate problem of the embarrassing and pointed questions which representatives of Emanuel Deetjen & Company were putting to Mr. Herbert and others in Bank Hofmann about proof of ownership of the so-called nominee or friends' shares, and that that is why Frank endorsed all these bills of sale so as to put a spurious or phony record to satisfy Emanuel Deetjen, so they would clear the transactions which Bank Hofmann was asking them to clear, at the instance of Mr. Herbert specifically, and all the other co-conspirators behind them.

Frank's defense basically here is that "Look, I just did a notarial service."; that maybe he did it carelessly but that is all; that he didn't know all the outlines of the scheme. True he represented one or more of these men, but he was only representing them as a lawyer and that is all. He didn't know the outlines of the scheme and therefore he had nothing like the requisite guilty knowledge and intent to not only know about the scheme, but to do anything to aid and abet it.

It certainly is the law, ladies and gentlemen, that a lawyer can represent people who are criminals in our county. You all know that. Just because a man who happens to be neck deep in a criminal enterprise of his own

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2 or perhaps with others, goes to a lawyer and consults him,  
3 that doesn't make the lawyer particeps criminis with that  
4 particular person who is seeking to be a client of the  
5 lawyer.

6 But the Government claims that that is what  
7 they are not contending here. They recognize the force  
8 of what I just said to you. Their claim is that Frank wasn't  
9 just a lawyer and a notary. Frank knew what the scheme was  
10 and he was acting as something other and different than  
11 a lawyer, he was acting as an aider and abettor with full  
12 knowledge of the essential scheme, with full recognition  
13 that it would work a fraud on the investing public and  
14 that he did certain acts with the expectation that he would  
15 get money for his participation.

16 As you can understand, that is a lot different  
17 than just being an honest lawyer trying to help out a man,  
18 as he would be entitled to do if he was an honest lawyer,  
19 even though his client without his knowledge was engaged  
20 in a criminal scheme. You have got to decide that. Obviously,  
21 if you decide that all Frank was doing was notarial services  
22 and legal services, without knowledge of what truly was going  
23 on, then you should acquit him.

24 Let me pause here and bring up a collateral  
25 but still perhaps an important matter to the litigants. That

1 qb-8

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2 is this: TCere has been a great deal of argument about  
3 a concession which the prosecution has made and that  
4 concession, as you well know is, Mr. Sorkin made it to you  
5 this morning again, that the Government has not proved that  
6 Martin Frank received any part of \$15,000, whether it had  
7 been cash or kind. That is true. However, this Court  
8 has permitted the Government to argue and has left in the  
9 record evidence, particularly statements by people like  
10 Mr. D'Onofrio, of what was talked about between Frank and  
11 others and the importance of that is, if you believe it, that  
12 would be some evidence that Frank knew gull well what was  
13 going on and that he wanted to participate in the scheme.

14 Of course, you would also have to go further and  
15 find out that he really knew beyond any reasonable doubt  
16 that he knew of the criminal elements of this scheme.

17 What must you consider in making a determination  
18 of whether or not Mr. Frank was an aider and abettor as the  
19 law means that term? I have already covered most of it,  
20 but let me repeat it. First, you have got to be satisfied  
21 beyond a reasonable doubt that he knew what the scheme  
22 was; that he willingly joined it; that he wanted to  
23 see that it succeeded; and that he actually took steps  
24 to see that it did succeed-- that Frank had, in summary,  
25 a knowing stake in the enterprise and that he did something

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1 to fulfill the enterprise charged here. It is only when  
2 you are satisfied of all of that that you would be entitled  
3 to convict Mr. Frank as an aider and abettor under Counts  
4 2 through 10, inclusive, or any one of those counts.  
5

6 I have come virtually to the end of my remarks  
7 but I still have to cover some matters which though you  
8 might style them general, are nevertheless very important,  
9 particularly in the context of this lawsuit. Under the  
10 law you, the jury, are the sole and exclusive deciders  
11 of the credibility of the witnesses who appeared here during  
12 our trial and the weight which their testimony deserves.  
13 YOU are entitled, and indeed you should, consider such  
14 factors or criteria as the demeanor of the witness as he  
15 or she sat here, any motive that that witness might have  
16 to lie or conceal the truth, any interest which that witness  
17 might have in the outcome of this case, that is to say  
18 your verdict in this case, the strength or weakness of  
19 recollection of that witness of past events, the testimony  
20 of that witness as considered and compared with the testi-  
21 mony of other witnesses on the same subject matter, those  
22 and similar practical criteria of course you should rely on  
23 in this crucially important role of yours to decide the  
24 credibility of witnesses.  
25

Now, the lawyers have made arguments and properly

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1 so as to how you should assess credibility.

2 That is perfectly fair and proper. But please  
3 dn't think that you are bound by any of those arguments.  
4 You, not the lawyers, not the Judge, decide credibility.  
5 You, not the lawyers, not the Judge, decide the weight which  
6 the testimony of a given witness deserves.  
7

8 There are some other important features which I  
9 ask you to keep in mind. It is a major argument of the  
10 defense in this case, and this includes both defendants,  
11 as you well know, that Ramon D'Onofrio and Joseph Bonavia,  
12 and perhaps others, were witnesses who came in here and, in  
13 effect, their testimony was given in return for certain  
14 favorable treatment in sentencing and otherwise. More than  
15 that, you well know from my reading of the indictment alone,  
16 not to mention all the arguments on this issue by counsel,  
17 that D'Onofrio is what is called an accomplice. He was,  
18 according to his testimony, and according to the allegations  
19 in the indictment, a co-conspirator of a major variety in  
20 this situation.

21 End 3A  
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You also know from his own lips that D'Onofrio is an admitted criminal, a liar, and that he spent a good part of his adult life in criminal and nefarious enterprises. He said as much himself. You also know that there is in evidence a written contract which apparently was negotiated, signed and reduced to writing in what has been called the Pentonville jail, the Pentonville prison or just plain Pentonville in the United Kingdom.

You should consider very carefully, indeed with scrupulous care, the testimony of any accomplice witness, or any witness who admits that he is a liar, a thief and a criminal, or that he is an accomplice in the various events which are subject and relevant to this indictment. You must consider the testimony of any witness like that with scrupulous care.

It is true that under federal law the testimony of such an accomplice witness without more would be sufficient to support a conviction. But even though that is the law, I instruct you to consider D'Onofrio's testimony with particular care. Consider the contract he made with the prosecutor. Consider his admissions of lies and other criminal conduct. That is perfectly fair and necessary that so you do. Therefore, the defense certainly was entitled to make the many arguments which

jqbr 2

they have made about Mr. D'Onofrio and his credibility.

But keep in mind, you, not they, decide this question. Keep in mind further that just because a man is an admitted criminal and an admitted liar and a cheat, in life it is possible that such an individual might tell the truth occasionally.

Bonavia is somewhat in the same category, although

I do not recall myself that Bonavia admitted to any criminal conduct, or indeed I don't believe that anybody, as I recall it at least, proved that he had ever been convicted of a crime.

Nevertheless he is an accomplice here really.

You know that from the indictment and you know that from what he said. True, he is very unhappy now about Stoller and Allen in particular. He feels that they let him down.

Well, you might consider, is this animus against the defendants which would cause him to come in here and testify falsely against the defendants? It is a fair consideration. Maybe D'Onofrio has animus against Stoller and Frank. You might consider that possibility too.

That is why I insist that you must scrupulously consider the testimony, particularly of D'Onofrio, and really just as importantly for other reasons, that of Bonavia, and decide this very important question of whether or not they were telling the truth in whole or in part.

1 jchr 3

2 You should consider also their expectations.  
3 Maybe they are not justified. Let us assume that D'Onofrio,  
4 for example, thinks erroneously that if he comes in here  
5 and tells a pack of lies to this jury and this Judge or  
6 in their hearing, maybe he assumes that he will get some  
7 favorable treatment from some Judge in this court. Even  
8 if it isn't a justified anticipation on his part, it is  
9 still very important that you ought to assess what he may  
10 be thinking in this regard. If you determine that he is  
11 just coming in here to tell a lot of lies or some lies  
12 even in order to get favorable treatment by this Court  
13 then you ought to disbelieve him.

14 I point out to you that under the law, depending  
15 on how you assess the credibility of any witness, whether  
16 it be D'Onofrio, Slavinski, Mr. DeCharriere, so on and so on,  
17 we have had a lot of witnesses, you know that, you and you  
18 alone decide whether you accept or reject wholly or in part  
19 the testimony of any one of these witnesses. Keep that in  
20 mind.

21 One other thing about witnesses. The government  
22 argues to you, as you know, that the defendants endeavored  
23 to influence and impede the testimony of Bonavia before  
24 the grand jury. You remember that evidence about certain  
25 phone calls made to Bonavia and so on. You are entitled

2 to consider the actions of these two defendants on trial  
3 if you recall such and decide whether or not they really  
4 did attempt to influence Bonavia. If you were to determine  
5 that Stoller and/or Frank made phone calls or had face-to-  
6 face conversations with Mr. Bonavia after they knew that there  
7 was a governmental investigation in this case then you would  
8 have to decide whether the conversations as you recall them  
9 were really intended by the defendant or defendants to influence  
10 or impede Bonavia and what he would say to the grand jury here  
11 in this court.

12 If you were to determine then that you are  
13 satisfied beyond a reasonable doubt that the defendant or  
14 defendants in question actually did have this intention in  
15 their conversations with Mr. Bonavia, you could consider that  
16 evidence as evidence of guilty knowledge on the part of the  
17 defendant in question. I repeat, you can do this or not,  
18 as you choose, depending upon how you assess the evidence  
19 of these conversations as you recall them.

20 You know that during the trial the government  
21 sought, and the Court permitted it, to introduce certain  
22 charts so-called in evidence. AS a matter of fact, Mr.  
23 Sorkin used one or more of them this morning, perhaps  
24 yesterday as well, in his summation. Keep in mind that  
25 though those charts are in evidence, as you well know from

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what you were told, they were made or purportedly made on the basis of other or more direct evidence of the case. For example, a good example is the chart based on the pink sheets. You remember a witness came here from the National Bureau and identified the pink sheets and they are in evidence. Well, you are certainly entitled to consider the charts but when you do, if you do, keep in mind that really these charts are no more than a visual aid and they are as strong or as weak as the direct evidence on which they are based. In other words, if you were to determine that the charts don't fairly comport with the direct evidence on which they are purportedly based, then you should disregard those charts altogether.

I call to your attention before I conclude that the question of possible punishment in the event you were to determine a defendant guilty here of any one or more of these counts should in no sense or in no way enter into your discussions or deliberations. You are not called upon to decide punishment in the event you find a defendant guilty. Under the system in the event that you do find one or both defendants guilty the Judge of this court imposes sentence, as I think you all understand. Therefore, I ask you most earnestly not to consider possible punishment or what the law might permit as far as punishment at all

1     page 6

2     in the course of your deliberations.

3             When you conclude your deliberations we ask,  
4     under the law, that you return what is called a  
5     general verdict in respect to each of the counts still  
6     on trial. That is to say, Counts 1, 2 and including 10 and  
7     Counts 14 and 16, which latter two, of course, as you  
8     know, are against Stoller only. All we mean by a general  
9     verdict is that you should report through your foreman,  
10    Mrs. DeBartola, on each count as to each defendant named  
11    in that count when you find him guilty or not guilty of  
12    that particular charge. Furthermore, under the law you are  
13    required to return unanimous verdicts. If your verdict  
14    is guilty it should be unanimous. If your verdict is inno-  
15    cent it should be unanimous.

16            As has been pointed out I think to you by one or  
17    more counsel, correctly enough indeed, you are entitled to see  
18    any and all exhibits which were actually admitted in evidence  
19    during the trial. My practical advice to you, however, is to  
20    wait until you take up your deliberations and then if you want  
21    to see an exhibit simply send a note out to me describing  
22    that exhibit as you recall it and then the lawyers and I will  
23    see to it that we have the marshal bring back whatever you  
24    want.

25            I am going to ask you to take a recess. You have

1 jchr 7

2 been most patient. I have had to cover a very lengthy ground  
3 with you. I now want to take up my charge with the lawyers.  
4 Perhaps I unwittingly misstated something or left it out and  
5 then as soon as I treat that problem we will call you back  
6 in and commit the case to you. Please take a recess  
7 at this point.

8 (The jury left the courtroom.)

9 THE COURT: Mr. Sorkin, any exceptions? Anything  
10 I have left out?

11 MR. SORKIN: I have just a few minor ones  
12 first, your Honor. I think your Honor said that Allen and  
13 Stoller were involved in the conspiracy or the only people  
14 involved in the conspiracy were D'Onofrio, Frank, Stoller  
15 and Harbet and your Honor did not mention Allen but I  
16 think that has been clearly correct.

17 THE COURT: The jury by this time, given the  
18 amount of time I had to spend, if they haven't gotten that  
19 now there is no point in adding that.

20 MR. SORKIN: I think your Honor may have been  
21 under the impression that the conspiracy began on or about  
22 February 4, '69, the date of the effective date. I think  
23 your Honor indicated that the conspiracy was to run after  
24 the stock went public and I think that the conspiracy  
25 alleged is June 1, 1963.



1        jehbr 8

2                THE COURT: I did say that at one point, although  
3 I did also add that as long as it is any substantial period  
4 within the beginning and terminal point, as alleged, that  
5 is sufficient. I did misspeak there.

6                MR.SORKIN: I would appreciate if your Honor  
7 would instruct the jury that the conspiracy is alleged  
8 to have begun then.

9                I think your Honor mentioned with respect to  
10 the mailings in discussing Count No. 2 that there had to be  
11 an interstate communication. I think with respect to the  
12 mailings it can be intrastate with respect to this.

13               THE COURT: Wait a minute. I was tracking your  
14 charge and I wondered at the time if that was accurate  
15 and I forgot to correct it. You mean when I was talking  
16 about the mail fraud counts?

17               MR. SORKIN: When you were talking about Count  
18 No. 2, the two mailings to Dinan and also the first one  
19 I think is to Wein.

20               THE COURT: What about the other counts, they were  
21 interstate too.

22               MR.SORKIN: Your Honor said between states  
23 and we don't contend that there was any mailing between  
24 states here. We contend that it is sufficient for the  
25 jurisdiction that it be an intrastate mailing as long as the

1 jobr 9

2 mails are used. It could be mailing across the street,  
3 if need be.

4 The next point, I may be incorrect, I am not  
5 sure with respect to the \$15,000 whether your Honor indicated  
6 the fact that the government didn't prove that he got paid  
7 can be considered as part of the evidence but the fact that  
8 he didn't get paid is of no consequence --

9 THE COURT: I think I have said sufficient to that  
10 subject, exception.

11 MR. SORKIN: Lastly, your Honor, I think there is  
12 some misunderstanding among all of us on the exact wording  
13 of Count No. 14. Your Honor began to read something and  
14 then you moved on to the copy of the indictment that we  
15 have and I am not quite sure that you have it accurate.  
16 I think the corrected copy begins with the language of  
17 Mr. Stoller answering "Now, for record to make it absolutely  
18 clear," and I think your Honor began to read from there and  
19 you put a sentence in. Your Honor may have been looking at  
20 the first indictment, I am not sure.

21 THE COURT: I remember beginning "now." the  
22 answer. I am aware of that.

23 MR. SORKIN: Yes. The last thing, you indicated  
24 I think in your closing remarks that the jury should  
25 certainly scrutinize Bonavia's testimony. While we agree

1 jgbr 10

2 you indicated that he was an accomplice in this, I don't  
3 think there is any evidence that Bonavia was an accomplice --

4 THE COURT: Wait a minute. You alleged, I be-  
5 lieve, that he was a co-conspirator.

6 MR. SORKIN: We do not.

7 THE COURT: Then that is my mistake.

8 MR. SORKIN: The Josephs we have are Joseph  
9 Arden and Joseph Pfingst but we do not allege Bonavia was  
10 a co-conspirator.

11 MR. GOULD: I didn't understand your Honor charged  
12 that way.

13 THE COURT: I did say that it could be the jury  
14 would regard him as an accomplice or something to that  
15 effect and I really believe that. Maybe he is. I might  
16 have implied --

17 MR. SORKIN: You lumped them with D'Onofrio in-  
18 dicating they were accomplices here. Certainly Mr. Gould  
19 is correct and the jury can find he was an accomplice,  
20 we don't allege that he was an accomplice.

21 THE COURT: I will say that you have not alleged it  
22 but I will still say that they might possibly regard him as  
23 one.

24 MR. SORKIN: If that is true with Mr. Bonavia  
25 then, virtually everybody is an accomplice. The only proof

1 jabr 11

2 that one in here is that at some point in time 9100 shares  
3 went into his account. The issue it seems to me is whether  
4 he ordered it or whether he didn't order it. He had  
5 nothing to do with the underwriting. He had nothing to  
6 do with the Daur au Lac. He had nothing to do with the  
7 receipts. He was an ultimate purchaser of stock. I don't  
8 see how he can be considered as an accomplice.

9 THE COURT: I will tell you why. It seems to  
10 me the jury might be entitled to think that Bonavia was  
11 told this much of it, that if he would buy this stock they  
12 would bail him out later through the Elinors.

13 MR. SORKIN: There is no proof that he was told  
14 that.

15 THE COURT: I know, there isn't in haec verba.  
16 I don't want to debate it.

17 MR. GOULD: It doesn't make any difference.  
18 Your Honor would charge any way that in view of his  
19 interest in giving testimony that he may be getting something  
20 out of it, that is supposed to get the same scrutiny as if he  
21 were an accomplice.

22 THE COURT: Yes. I don't want any argument.  
23 You have made your point and I think I can treat this  
24 fairly to you, Mr. Sorkin, without doing a disservice to what  
25 I have already said.

1 jgbr 12

2 What else?

3 MR. SORKIN: Nothing else.

4 MR. GOULD: May I respectfully direct your  
5 Honor's attention to Defendant Stoller's request No. 27.  
6 I think your Honor omitted that and I believe the omission  
7 was inadvertent. Do you remember we discussed that,  
8 the second paragraph?

9 THE COURT: 27? I just gave that charge.  
10 You better look again.

11 MR. GOULD: The last one. Your Honor did not  
12 charge that.

13 THE COURT: Look, Mr. Gould, I told you and  
14 every other lawyer and you knew this from previous experi-  
15 ence, I don't use your language. But the number of 27  
16 I charged in spades and if I may say so a lot more  
17 emphatically than your request.

18 MR. GOULD: I am only talking about the last  
19 paragraph of 27. That is the only part of it to which I  
20 direct your attention.

21 THE COURT: Agreed, I didn't say that in haec  
22 verba but I think said the point in spades; exception to  
23 you.

24 MR. GOULD: Your Honor stated that you do not  
25 recall that Bonavia admitted to any criminal conduct.

1 jgbr 13

2 I respectfully direct your Honor's attention  
3 to Bonavia's admission of false testimony before the grand  
4 jury and the Securities and Exchange Commission.

5 THE COURT: You are correct. I will so  
6 instruct the jury.

7 MR. GOULD: I respectfully except to that portion  
8 of your Honor's charge which relates to the characterization  
9 of Stoller, Allen and D'Onofrio as possible I believe under-  
10 writers within the definition of the '33 Act and that part  
11 of the charge which relates to the obligation that their  
12 function is as underwriters should have been disclosed. I  
13 direct your Honor's attention that no such charge is made in  
14 the indictment or in the bill of particulars. When we  
15 asked for particulars as to what misrepresentations were  
16 claimed we didn't get anything like that and it was not until  
17 yesterday that it became manifest to us that the government  
18 was contending that these men may have been underwriters  
19 and that the failure to identify them as underwriters was  
20 a violation of the '33 Act.

1 gabr 1

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2 THE COURT: Well, I called to your specific  
3 attention paragraph 5C of Count 1 of the indictment.  
4 If you were misled by that, I certainly was not, even before  
5 this trial began.

6 MR. GOULD: All it says there is D'Onofrio agreed  
7 to aid him in the spring. Now, your Honor, let me add one  
8 other thing. If you want me to argue it, I will argue it.  
9 There is no proof at all in this case that either Stoller  
10 or Frank or, for that matter, Allen had any degree of  
11 participation in or responsibility for anything that was in  
12 the offering circular --

13 THE COURT: I didn't say that they did.

14 MR. GOULD: If your Honor please --

15 THE COURT: I carefully segregated out Frank  
16 as not even being in on that act.

17 MR. GOULD: I understand that, your Honor.

18 THE COURT: I didn't say that Stoller did.  
19 I said that the government contends that D'Onofrio did this  
20 with the knowledge of Stoller. After they made their so-  
21 called deal, to use D'Onofrio's words.

22 MR. GOULD: Your Honor, there is no proof that  
23 the contents of the offering circular with whatever  
24 reference it had to underwriters was at any time made known  
25 to Stoller or to Allen or, for that matter, to D'Onofrio.



1 gabr 2

2 THE COURT: So you can argue. I don't blame you,  
3 but I don't agree that I charged the jury improperly or that  
4 you were misled by what the government was up to here.

5 If I knew it, a fortiori, I believe you  
6 gentlemen knew it. So exception to you.

7 MR. GOULD: Would your Honor just bear with me  
8 for one minute to see if we have anything else?

9 THE COURT: Surely.

10 (Pause.)

11 MR. GOULD: It is suggested to me, your Honor,  
12 that when your Honor defined the impact of the statute of  
13 limitations, I think what the Court said was that in order  
14 to convict or to get around the problem of statute of  
15 limitations, the jury would have to find that there was  
16 a single act after February 5 --

17 THE COURT: Overt act, at least one after  
18 February 15th.

19 MR. GOULD: May I respectfully suggest that your  
20 Honor charge what happens if they do not find such an act.  
21 I think the conventional way of doing it is to say, if you  
22 find that there was such an act, you need pay no attention  
23 to the statute of limitations.

24 THE COURT: I don't understand how you can get  
25 around what I said. I said that in order to convict they

1 qabr 2

2 had to find. Why do I have to state the negative, in any  
3 event?

4 MR. GOULD: I only suggest it with respect to  
5 the statute of limitations because of its --

6 THE COURT: Mr. Gould, I didn't use the word  
7 statute of limitations.

8 MR. GOULD: I know you didn't.

9 THE COURT: I didn't say the negative or the  
10 affirmative. I don't see any reason to say either.

11 Exception to you.

12 MR. GOULD: I am suggesting it.

13 THE COURT: I understand. Exception to you.

14 MR. SORKIN: I don't mean to interrupt  
15 Mr. Gould. There is one other matter that I forgot to pin-  
16 point.

17 THE COURT: Let Mr. Gould finish and we will  
18 come back to you.

19 MR. SORKIN: I am sorry.

20 MR. GOULD: I wonder, respectfully, whether  
21 your Honor has conveyed the true spirit of one of the  
22 things in our request No. 27, and that is that a witness  
23 can be impeached not only in the ways in which your Honor  
24 indicated, which have already been suggested, but also by  
25 showing prior inconsistent statements, that is prior

1 gabr 4

2 statements inconsistent with his present testimony.

3 I don't think that was one of the things that  
4 your Honor mentioned.

5 THE COURT: That's right. You are right  
6 about that.

7 MR. GOULD: I am just looking over these notes,  
8 your Honor.

9 THE COURT: You want me to do that with the  
10 jury? I will.

11 MR. GOULD: I would appreciate it if you would,  
12 sir.

13 THE COURT: All right.

14 If we could move along, gentlemen, this has been  
15 a very long day.

16 MR. SORKIN: Your Honor -- I thought he said  
17 he was through.

18 THE COURT: Maybe he did. I didn't hear him.  
19 You are not through, are you?

20 MR. GOULD: I just want to check one thing.

21 (Pause.)

22 MR. GOULD: I assume we have an exception  
23 to those portions of our request to charge on which your  
24 Honor has already ruled?

25 THE COURT: Oh, yes, as a matter of law.

1 gabr 5

2 MR. GOULD: I think that covers me.

3 THE COURT: Now, Mr. Sorkin, to go back to you  
4 for a moment.

5 MR. SORKIN: Just two short points.

6 One, on or about dates. Your Honor didn't  
7 charge variance in dates. It seems to me we are entitled  
8 to a charge -- if the jury finds it was substantially on  
9 the date charged, they are entitled to make such a finding.

10 The second point, your Honor, Allen is an  
11 accomplice, and it seems to me that in grouping these  
12 people together, whether the jury should give a great deal  
13 of consideration and scrutinize the testimony --  
14 if your Honor wants to put Bonavia and D'Onofrio there, I  
15 think your Honor ought to point out they are entitled  
16 to scrutinize Allen's testimony just as well.

17 MR. GOULD: I think that's a good point, your  
18 Honor. I think that is right. I think pragmatically when  
19 you are dealing with this problem, as to D'Onofrio, as to  
20 Bonavia, as to Allen -- I will leave Feeney out.

21 Certainly as to those three, your Honor, they  
22 should get the same kind of consideration from the jury as  
23 if they were indeed accomplices.

24 THE COURT: All right.

25 MR. GOULD: I would agree to that.

1 gabr 6

2 THE COURT: All right.

3 MR. GOULD: I think it is fair.

4 THE COURT: Mr. Feldshuh.

5 MR. FELDSHUH: Your Honor, I would ask you to  
6 grant your permission to have Mr. Derfner address the Court  
7 on some of these requests.

8 THE COURT: Yes.

9 MR. DERFNER: As far as Government Exhibit  
10 Request No. 3, when we asked to object to the government's  
11 requests, we did so through Mr. Gould. We adopted his  
12 objection.

13 THE COURT: What is No. 3?

14 MR. DERFNER: No. 3, your Honor, is the  
15 burden of proof and reasonable doubt.

16 THE COURT: Wait a minute. Rather than  
17 dealing with the government's request, tell me, what is it?

18 MR. DERFNER: We had a specific objection to that  
19 charge, specific language, and your Honor to my recollection  
20 said that you would not charge that language as it appears  
21 in the bottom of page 2.

22 THE COURT: What language are you talking about?  
23 I can't rule on these things in a vacuum. I don't understand  
24 you.

25 MR. DERFNER: It is not necessary for the

1       gabr 7

2       government to establish the guilt of the defendant to  
3       a positive certainty or --

4               THE COURT: Mr. Derfner, stop right there.  
5       Your recollection, sir, and I am not blaming you for this,  
6       is totally fallacious. I stated at the time -- you are  
7       quite correct, this issue was raised and I flatly and  
8       unequivocally stated that I would so charge. I didn't use  
9       the words, but I certainly used the substance.

10              Exception to you.

11              MR. DERFNER: All right.

12              As to our request No. 13, your Honor --

13              THE COURT: Wait a minute now. Hold on.

14              MR. DERFNER: Our request 13 is knowing and  
15       wilful participation in a scheme to defraud.

16              THE COURT: Mr. Derfner, again I remember this  
17       goes on for some six or seven pages.

18              MR. DERFNER: I am only referring to specific  
19       language, your Honor.

20              THE COURT: And I told you also that I was not  
21       about to charge the specific language in any of these re-  
22       quests except in very few particulars where we happened  
23       to overlap.

24              MR. DERFNER: I would ask your Honor to consider  
25       the very short sentence here that was not charged, I think

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2 it is material, and that is that if the defendants --

3 THE COURT: Where? This is a very lengthy  
4 request.

5 MR. DERFNER: The second page of request 13, the  
6 bottom of the second paragraph on the second page. The  
7 last sentence in that paragraph, your Honor, starting with  
8 "If the defendants sincerely" --

9 THE COURT: I charged that in detail. I didn't  
10 charge it in your language, I charged it in what I prefer.  
11 The point I made in spades.

12 Exception to you.

13 MR. DERFNER: Lastly, on our requests to  
14 charge, your Honor, supplemental request 45, our last request  
15 was we asked the Court to instruct that the jury draw  
16 no adverse inference from not only the dismissal of some  
17 counts but the failure to dismiss other counts. Your Honor  
18 charged the first part of that but did not charge the second  
19 part. We believe that the failure to instruct the jury  
20 that they are not to draw an adverse inference against  
21 the defendants from leaving in the other counts is to our  
22 detriment.

23 THE COURT: You are right. I didn't say that  
24 part of it.

25 MR. GOULD: I think that is the point, your Honor.



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2 It just occurred to me.

3 THE COURT: You really want me to say that?

4 MR. GOULD: Not necessarily what Mr. Darfner says.

5 I do think, your Honor, that where counts are dismissed  
6 and the jury is told they have been dismissed, that doesn't  
7 change any of the burden of the government with respect  
8 to the --

9 THE COURT: Of course. I ask you, gentlemen --

10 MR. GOULD: It is a question of whether it  
11 has to be articulated or not. I don't think we have to  
12 spend any time in debate.

13 THE COURT: I agree with you. That is the  
14 question. I admit that I would see no harm in it in the  
15 charge in chief, but now do you really want me to say  
16 that?

17 MR. GOULD: Let us consider whether as a matter  
18 of fairness it should or should not be. I can see both  
19 sides of it.

20 THE COURT: I am not interested in fairness  
21 in the sense that I am disagreeing with you about fairness.  
22 What I am asking you is, as a practical matter, do you  
23 want this court to utter this other half of the instructions  
24 at this point? I will be glad to do it. I intended to do  
25 it, and in frankness to Mr. Darfner I just left it out.

1  
2 MR. GOULD: I think that where there has been  
3 so much emphasis on the dismissal of such a large number of  
4 counts, I think something should be said. I believe that a  
5 jury gets confused by that.

6 THE COURT: I will go along with your view, but  
7 some day I will tell you what I think about it in another  
8 context.

9 MR. GOULD: Look, all you are saying to the jury,  
10 your Honor, with all respect is the mere fact that I dismissed  
11 some and didn't dismiss others does not mean that I think  
12 that the ones that are still here have been proved.

13 THE COURT: I agree with you. I understand that.

14 MR. FELDSHUH: I like that language --

15 THE COURT: Please, gentlemen, here we go again  
16 sounding like a bunch of Armenian rug dealers, all talking  
17 at once. I don't want to buy any of your wares unless you  
18 want me to and I will be glad to do it.

19 MR. GOULD: I would respectfully suggest that  
20 the Court say to the jury that reference has been made  
21 to the dismissal of certain charges, that does not mean that  
22 the charges which remain have been proved.

23 THE COURT: I will put it in my own way.

24 MR. GOULD: Very well.

25 THE COURT: I think I like Mr. Dorfner's way

1 gabr 11

2 better than yours. In any event, if this is what you want,  
3 I will do it.

4 MR. GOULD: I would like to have it.

5 One other thing. Your Honor told the jury that  
6 they have the right to have exhibits.

7 THE COURT: Yes.

8 MR. GOULD: I think your Honor should add that they  
9 also have the right, which I hope they don't invoke, to have  
10 testimony read to them.

11 THE COURT: Somebody already said that.

12 MR. GOULD: I said it.

13 THE COURT: It is true. Why do I have to add that?

14 MR. GOULD: Because they may not pay any attention  
15 to me and they may pay attention to the Court. I hope that  
16 isn't true.

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MR. FELDSHUH: Judge, I think that you misspoke your Honor --

THE COURT: My dear Mr. Feldshuh, you are absolutely right.

MR. FELDSHUH: In 21 to 31, Exhibits --

THE COURT: Wait a minute. I thought you just told me that Mr. Derfner was going to handle this.

MR. FELDSHUH: Okay.

THE COURT: Coping with this is not the easiest thing in the world and not to have two of you hitting me from each side.

MR. FELDSHUH: I was just going to correct something.

THE COURT: I agree with you. You just told me that Derfner was going to handle this. I can't listen to Derfner and then suddenly have you coming in on the side.

MR. FELDSHUH: I will withdraw.

THE COURT: What is it?

MR. DERFNER: Your Honor with respect to Government Exhibits 21 through 31, respectfully we assert that the Court stated that Frank notarized all of these documents and, in fact, the evidence shows that only receipts numbered Government Exhibits 21 to 25 show Frank's notary on them.

1 THE COURT: 21 through 25?

2 MR. DERFNER: Yes, sir. Also, your Honor,  
3 I believe that the Court stated that Mr. Frank had called  
4 Mr. Bonavia and attempted to change Mr. Bonavia's --

5 THE COURT: I didn't say that at all. Exception  
6 to you. That I remember clearly.

7 MR. DERFNER: Just on that same point, one other  
8 matter, your Honor. Any guilty knowledge that could be  
9 attributed by any discussions between Frank and Bonavia  
10 would not relate to Training With the Pros, we would assert,  
11 but would relate to the matter of what the grand jury had  
12 undertaken at that time in December of 1969, which was  
13 another security.

14 THE COURT: I refuse to so charge. Exception  
15 to you, your client.

16 MR. DERFNER: I believe that is all we have,  
17 your Honor.

18 THE COURT: Check with Mr. Feldshuh.

19 MR. FELDSHUH: No further comments.

20 THE COURT: All right. Bring in the jury.

21 (Jury present.)

22 THE COURT: Mrs. DeBartelo and ladies and gentle-  
23 men of the jury, there are certain matters which counsel  
24 have pointed out to me, asked me to bring to your attention,  
25

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2 which I gladly do.

3 First of all, I believe I may have misspoken  
4 or perhaps erroneously misled you when I said something  
5 to the effect that the Government claims that the conspiracy  
6 began as of February 4, the date of the issuance of TWP  
7 stock. That is not so.

8 The Government, as I think you recall, whatever  
9 I may have said, contends that the conspiracy began really in  
10 the fall of 1968, September and October specifically of  
11 that fall.

12 MR. SORKIN: With all due respect, your  
13 Honor, June of 1968.

14 THE COURT: That is what the indictment alleges.  
15 I am asking you to state to me -- don't you agree that  
16 you claimed really on the proof that it was a little later,  
17 September or October?

18 MR. SORKIN: We believe it began on  
19 or about the meeting at the Baur au Lac.

20 THE COURT: I stand corrected. The Government  
21 sticks to what they allege, June of 1968, beginning most  
22 particularly with the meeting which D'Onofrio told us  
23 about at the Baur au Lac Hotel.

24 Now, also in regard to the mailings in these  
25 various counts, Counts 2 and, indeed, the mail fraud counts

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2 themselves, I read to you certain language which might have  
3 suggested that the Government has to show that a mailing  
4 went to an addressee in another state than that of  
5 New York.

6 Now, a number of these mailings were really intra-  
7 state, that is within the State of New York. As you know,  
8 the addressees had addresses here in New YorkState and the  
9 brokers were here in New YorkCity.

10 As long as you find that there was a mailing,  
11 it is sufficient as long as it was within this state. It  
12 doesn't have to be across state lines if it is a mailing.  
13 Other kinds of communications would be different, but that  
14 is not what we are concerned with here. We are concerned  
15 with mailings.

16 I misspoke when I stated to you toward the end  
17 of my remarks that the Government has alleged or at the  
18 very least contends that Bonavia to an extent was a co-  
19 conspirator. I stand corrected on that. First of all,  
20 Bonavia certainly isn't named as a co-conspirator in the  
21 indictment, and that you know from my reading of the indict-  
22 ment.

23 More than that, the Government does contend  
24 quite differently. They contend he was not a co-conspirator.

25 On the other hand, the force of what I was



1 trying to say to you I repeat, and that is it may well be  
2 that to an extent at least you would determine from some  
3 evidence that Bonavia was an accomplice and, if so, you should  
4 scrutinize his testimony with particular care for that  
5 reason. But also in regard to Bonavia there are other  
6 reasons why you should scrutinize his testimony with  
7 considerable care, and this brings up another misstatement  
8 on my part. I said that I did not recall that Bonavia  
9 admitted any criminal conduct. I am wrong in that.

10  
11 I recollect that he did say that he had told  
12 falsehoods to the grand jury right here in this very build-  
13 ing. Therefore, that is another reason why you should  
14 consider, if he told falsehoods once, maybe he is telling  
15 falsehoods again.

16 So what I told you in the first instance about  
17 scrutinizing Bonavia's testimony with care still stands for  
18 those additional reasons, even though I misspoke.

19 Now, there is another thing in this area. I  
20 omitted to mention another witness, even though he wasn't  
21 produced by the Government, and that is Jerome Allen. He  
22 is alleged to be a co-conspirator and accomplice in all  
23 of this and you should scrutinize his testimony with great  
24 care for that reason alone, and also because according to  
25 his testimony he told a bunch of lies to the grand jury on

several occasions.

Of course, he contends that the Government put him up to telling those lies, but assuming you find that he did lie, why, that is another good reason for scrutinizing Jerome Allen's testimony with particular and scrupulous care.

I did not point out, and the Government has asked me to point out properly enough, that in these very substantive counts in particular, specific dates of mailings for example are set forth.

It is not necessary under the law that you find that the mailings went out absolutely on the date alleged. It is sufficient under the law if the mailing went out, if it did, in fact, at all, at a date reasonably close to the specified date or dates in the indictment.

Now, in summarizing some of the criteria that you ought to consider in appraising the credibility of witnesses, I mentioned a number of factors. I made it plain I didn't intend that to be all-inclusive, but counsel have pointed out, and I think correctly enough, that one criterion you ought to consider in regard to any witness where this is appropriate is whether or not he was shown to have made a prior inconsistent statement to the testimony which he gave here during the trial. That is certainly a very important

1 point.

2  
3 If you find that such a circumstance existed with  
4 one or more witnesses, you should consider that in apprais-  
5 ing his or her credibility.

6 I apparently -- I know I incorrectly misspoke  
7 unintentionally, but nevertheless, incorrectly. I mentioned  
8 that series of exhibits, Government Exhibits 21 through 31.  
9 I either stated or impl d that Mr. Frank's notarial stamp  
10 was placed on all of those. That is not so. My recollec-  
11 tion is that the notarial stamp of Mr. Frank is to be found  
12 on only Government Exhibits 21 to and including 24.

13 Forgive me for that mistake.

14 Also I, of course, on several occasions now,  
15 not only today but earlier in the trial, referred to the  
16 dismissal of the counts which this Court dismissed at the  
17 end of the Government's case.

18 What I didn't say apparently, and I am perfectly  
19 pleased to say because it may be important, and that is this,  
20 obviously those counts are out of the case and are no longer  
21 for consideration. In addition, I don't want you to draw  
22 any inferences for or against anybody in the case because  
23 I didn't dismiss the remaining counts. All I was doing  
24 was saying that the Government is going to the jury on those  
25 counts and I wasn't indicating any feeling on my part that

1 the defendants are guilty under any of these counts. The  
2 Government still has the burden of proof as it knows and  
3 I am sure you know.

4 I believe that covers everything, gentlemen.  
5 If you feel I have overlooked anything --

6 MR. FELDSHUE: I believe it does, your Honor.

7 MR. GOULD: I have nothing more, your Honor.

8 MR. SORKIN: Nothing else, your Honor.

9 THE COURT: Now, I have a clean copy of the  
10 indictment, Mrs. DeBartolo, which we are going to give to  
11 you through Mr. Bowes. Obviously you are to use this only  
12 as a guide. You understand that. I hope you have better  
13 luck than I do in reading some of these Xerox papers. I  
14 believe this is about as good a copy as we can get. The  
15 portions that this Court struck from the indictment are de-  
16 leted, so you will keep that in mind as you go through it.

17 Swear the marshals.

18 (Marshals sworn.)

19 (Alternate jurors excused.)

20 THE COURT: Ladies and gentlemen of the jury,  
21 you may now retire and commence your deliberations.

22 (At 3:50 P.M. the jury retired to the jury  
23 room to commence their deliberations.)

24 THE COURT: Gentlemen, my note reads as follows:  
25

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2 "Ladies and gentlemen, I forgot to say that,  
3 if you want, you may ask for portions of testimony to be  
4 read," -- signed H.R. Tyler, Jr., U.S.D.J.

5 MR. FELDSHUH: No objection.

6 MR. GOULD: No objection.

7 MR. SORKIN: No objection.

8 THE COURT: It will be delivered to the jury  
9 by the marshal forthwith.

10 (Recess.)

11 End 4B.

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2 5 pm

(5:55 p.m.; in open court; jury present.)

3 THE COURT: Mrs. DeBartola and ladies and  
4 gentlemen: In view of the hour, unless you tell me you are  
5 about to reach a verdict or verdicts, I propose to send you  
6 home. In other words, I don't want you to stay down here  
7 late. I would like you to go home with some instructions  
8 which are important in a moment and then return tomorrow  
9 morning at 9:30.

10 I think I am probably correct, am I not, assuming  
11 you are not about to reach a verdict?

12 THE FORELADY: You are correct.

13 THE COURT: All right.

14 A couple of things that are important to keep in  
15 mind.

16 First of all, when you come back tomorrow  
17 morning, take up your deliberations right where you left  
18 off obviously.

19 Second of all, don't discuss the case with  
20 anybody, and I mean literally anybody. family or friends.  
21 Just don't discuss it. It is none of their business,  
22 it is none of anybody else's business except your business.  
23 That is extremely important to keep in mind, particularly  
24 now.

25 The third thing is, and I want to preface

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2       this by saying that I have no reason to believe that any such  
3       thing will happen, absolutely none, but a little bit of  
4       caution may be worth it. If anybody accosts you in the  
5       street or on your way home or whatever and asks you anything  
6       about this case or your deliberations, you brush them off  
7       quick, and then if that should happen I wish you would  
8       tell me about it tomorrow when you come in. I emphasize.  
9       I have no reason to believe that this will happen. In fact,  
10      I would be astonished if it did happen. I just want you to  
11      know about that in case it did.

12               We will be here within call certainly in a few  
13      minutes. You come back, go right to your jury room. Don't  
14      come into the courtroom. Go into the jury room at 9:30  
15      tomorrow morning. I hope none of you are held up so you don't  
16      lose any time.

17               With that I will say good evening to you.  
18      Have a good evening thinking about other things.

19               (Adjourned to Thursday, October 17, 1974,  
20      at 9:30 a.m.)



October 17, 1974  
9:30 A.M.

(At 9:30 A.M. the jury returned to the jury room and continued their deliberations.)

(At 10:35 A.M. a note was received from the jury.)

(In open court; jury absent.)

THE COURT: Gentlemen, we have a note from the jury asking for four groups of exhibits. I see that Government counsel is not here, Mr. Gould is not here.

May I suggest those of you who are here look at particularly Number 1. I have never seen anything quite like Number 1 before. I rather doubt you have.

(Pause.)

MR. FELDSHUH: With your Honor's permission, we now have the transcript of the summations and with respect to Request Number 1, we will endeavor to call out the exhibits that were mentioned by the prosecution and the defense and see where we get.

It is certainly so omnibus in character, I quite agree. It is a difficult task. I don't know how else to treat it.

THE COURT: I have two suggestions which I might

1 throw out to same time. I am not sure you will agree  
2 to them, but you might consider the following.

3 One, we could send all of the exhibits in to  
4 them or, (2), we could have the jury come in and help us  
5 out a bit. The reason I suggest this, I suppose one could  
6 argue that request Number 1 could really be interpreted  
7 to mean everything.

8 I suppose a lawyer could say, well, I was referring  
9 to everything or at least pretty near everything.

10 An astonishing request, in my opinion.

11 MR. FELDSHUH: On the other hand, the fact  
12 that they did specify in the remaining items, I am just  
13 wondering whether, in fact, if we did have the transcript  
14 in front of us of the summations, whether the extent of  
15 culling out be so great as to --

16 MR. ALLENSTEIN: I don't think it is that dif-  
17 ficult a job really.

18 THE COURT: That may well be. I just put  
19 those two thoughts before you. We don't have to discuss  
20 them.

21 Think about them.

22 MR. FELDSHUH: Could we send in the 2, 3 and 4  
23 requests and in the meantime cull out, take a look at the  
24 transcript?  
25

1 gab-3 3622  
2 THE COURT: I think that is a good idea.

3 MR. SORKIN: Your Honor, may I just be heard  
4 on that?

5 THE COURT: Yes.

6 MR. SORKIN: My thought would be since they have  
7 asked for all of this at one time for whatever reason that  
8 may be, that we ask them as to Number 1, do they want  
9 the exhibits mentioned or do they want all the exhibits or  
10 what.

11 I would like to clear that up before we send in  
12 any exhibits.

13 I have a pretty good recollection, although  
14 obviously I am not going to dispute the record, of what I  
15 showed them and what I referred to. I would rather not  
16 do that. I would rather ask them specifically what they  
17 are asking for.

18 THE COURT: I see the point. That is one of the  
19 two things I suggested, so you don't have to argue with me.

20 MR. SORKIN: I am not.

21 MR. FELDSHUH: I think, your Honor, we would like  
22 an opportunity to glance at the summations and see what they  
23 are referring to. There may be an abundance of exhibits  
24 that they are not interested in.

25 MR. SORKIN: That could take, your Honor, an

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2 hour to go through the summations and look up what exhibits  
3 we are talking about.

4 I think it would be much simpler to ask the jury.  
5 If they still insist on it, then we can do it.

6 THE COURT: Let's get Nos. 3, 4 and 5 which, in  
7 my opinion, are very clear.

8 (Pause.)

9 MR. SORKIN: I am handing the clerk, your Honor,  
10 the offering circular and D'Onofrio's statement.

11 Do you want to leave the underlinings in here?

12 MR. ALLENSTEIN: I think that is the way it was  
13 when it was marked. I don't care about the underlinings.  
14 If you want to erase them, that's all right with me.

15 MR. SORKIN: There are some notations here. I  
16 would suggest we erase this.

17 MR. ALLENSTEIN: That's fine.

18 MR. SORKIN: Why don't we do that.

19 MR. FELDSHUH: Your Honor, may I address the  
20 Court for a moment, sir? I have an application to make,  
21 your Honor, while we are getting ready.

22 Y our Honor, because of unusual pressing engagement  
23 involving clients of our office, a pressure point where I  
24 have been absent now for five and a half weeks, with the  
25 permission of the Court and upon consent of Mr. Frank, I

1 respectfully request the Court to permit me at this time to  
2 designate Mr. Derfner as taking over in my place and receive  
3 the verdict and to take up with your Honor all other matters  
4 that may come in.  
5

6 THE COURT: In other words, you are seeking  
7 to withdraw from now on?

8 MR. FELDSHUH: Yes, your Honor. It is imperative  
9 that I do. Otherwise I wouldn't even consider it.

10 THE COURT: Come up, Mr. Frank.

11 Mr. Frank, I must get your acquiescence to this  
12 because your partner and counsel, Sidney Feldshuh, as you  
13 I think just heard, wants to withdraw from now on. In  
14 other words, leave up to Mr. Derfner and you whatever happens,  
15 including the verdict.

16 DEFENDANT FRANK: I thought you wanted to leave  
17 for the day?

18 MR. FELDSHUH: I find, your Honor, if I can  
19 go off the record for a minute, I am obliged to be in Wash-  
20 ington tomorrow.

21 THE COURT: You don't have to explain it to me.  
22 What I am interested in on the record is whether this is  
23 really what Mr. Frank wants to do. He is entitled to say yeah  
24 or nay, you know.

25 MR. FELDSHUH: May I put it this way, your Honor.

1 gab-6 3625  
2 May I at any rate leave, absent myself from  
3 the courtroom, leave it to Mr. Derfner during an interval of  
4 time until I can return which may be Tuesday, if the jury  
5 is --

6 THE COURT: Wait a minute, Mr. Feldshuh. No one  
7 is saying that the jury is going to be here next Tuesday.  
8 Possibly, I agree with you. Anything is possible in this  
9 world, but that is not the point.

10 What I understood you to be saying is, you want  
11 to withdraw from the proceedings henceforth, prior to  
12 verdict, through verdict and so on.

13 MR. FELDSHUH: That is what I would like to do.

14 THE COURT: I want Mr. Frank to tell me if that  
15 is what he wants to do.

16 DEFENDANT FRANK: Yes, your Honor. That is  
17 fine with me, your Honor. I said that is fine with me, sir.

18 THE COURT: Look, Mr. Frank, I have known you  
19 as a lawyer for a long time and certainly I know you are  
20 astute enough to know if you insist on having Mr. Feldshuh  
21 here, you are entitled to make that insistence. I don't want  
22 any ifs, ands and buts about this. It is a matter which  
23 is of some importance perhaps. If there is any reluctance  
24 on your part, I wish you would say so.

25 DEFENDANT FRANK: No, your Honor.



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2 THE COURT: Look, Mr. Feldshuh, as long as Mr.  
3 Frank has agreed to this, I will permit it. However, may  
4 I suggest to you that if you can return some time today,  
5 feel free to do so.

6 MR. FELDSHUH: Thank you, sir. Thank you very  
7 much, your Honor. If anything should happen on any other  
8 occasion during the next ensuing days where my calendar is  
9 relieved, I will seek to come back to the court.

10 Thank you very much.

11 THE COURT: We will say good day to you, see  
12 you when we see you next.

13 MR. FELDSHUH: Thank you, sir.

14 THE COURT: What about the other item, gentlemen?  
15 We have Exhibit 1, the offering circular, we have Frank  
16 Exhibit J, the day book of Marilyn Herzfeld for TWP.

17 MR. SORKIN: We are getting a clean copy of  
18 H, your Honor, the exhibit number was written on in pencil.

19 There are certain underlinings which I have tried  
20 to erase, but it becomes difficult. We are getting a clean  
21 copy of that.

22 THE COURT: All right.

23 MR. ALENSTEIN: If your Honor please, as to  
24 Request Number 1 in the note that we have, I think that  
25 I can have in a matter of maybe ten minutes the exhibits



that were mentioned in the summation for defendant Stoller.

I can't speak, of course, for other counsel.

THE COURT: Yes.

MR. DERFNER: I think we could have ours within 10 to 15 minutes, also, your Honor.

MR. SORKIN: Your Honor, I don't think I can quite frankly. I think the best method would be your Honor's suggestion, that we ask the jury specifically what they want. I repeatedly referred to all documents in evidence.

THE COURT: I was afraid of this. That is precisely my concern, one or more of you would say I was referring to all of the documents. I tell you what we will do. GET these three ready and I am going to ask the jury to give us some help. That doesn't mean, - Mr. Alenstein, that I disagree with you at all. I think you are right, you probably can, but it is going to take some time because Mr. Gould undoubtedly referred to some exhibits -- I know he did. He referred to some Frank exhibits, he referred to some Government exhibits, perfectly properly. So there will have to be an interchange here. Why don't you each compile your own lists as to what you think is necessary. In the meantime we will call the jury in and maybe they can condense this and make it more specific for us.

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2 (Jury present.)

3 THE COURT: Mrs. DeBartola and ladies and  
4 gentlemen, we have your note, of course. As a matter of  
5 fact, we have 82, 3 and 4, the offering circular, which  
6 is Exhibit No. 1 of the government, the D'Onofrio narrative  
7 statement first marked as a government exhibit but actually  
8 received as Stoller Exhibit H and then the so-called day  
9 book kept by Miss Herzfeld for TWP, which is called Frank's  
10 Exhibit J.

11 However, I think we might be grateful for some  
12 help on Item No. 1 in which you ask for "Exhibits mentioned  
13 in both the prosecution and defense summations."

14 The difficulty there is that it is rather broad  
15 and we wondered if you could perhaps help us as to specifically  
16 what it is you are really seeking.

17 For example, it could be argued that in a sense  
18 the lawyers were referring to practically all of the exhibits.  
19 In another sense, as you know and we all know, there were  
20 certain specific exhibits which they mentioned by exhibit  
21 number and, indeed, shown some of them to you.

22 Is there something you can do for us to help us?  
23 I am afraid it may take a long time culling this out, checking  
24 the record.

25 JUROR NO. 4: I think we were referring to the

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2 things that were actually shown to us physically by the  
3 defense and prosecuting attorneys, actually held up in  
4 evidence or shown to us at the time of the summations,  
5 not the things that were alleged as to which number, just  
6 those that were held up.

7 THE COURT: Or passed --

8 JUROR NO. 4: Held up by all of the attorneys  
9 involved.

10 THE COURT: That I think is some help. What  
11 I think we better do then, and it will take some time --  
12 as you can understand, these gentlemen --quite true, they  
13 didn't have time as they were talking to make notes as to ex-  
14 actly what they were handing you. In a case involving a  
15 fair number of exhibits, it is therefore necessary to check  
16 back.

17 So I will ask you to retire with the three other  
18 exhibits which you requested, and just as soon as we can do  
19 the culling job, we will send the balance in to you.

20 All right, you may retire once again.

21 JUROR NO. 5: May we request the exhibit of  
22 the notarized letters that Mr. Frank had notarized?

23 THE COURT: Yes.

24 JUROR NO. 5: We don't know the numbers, sir.

25 THE COURT: You are right. I understand you.

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2 We will produce those.

3 JUROR NO. 5: Thank you.

4 (At 11:00 o'clock a.m. the jury retired to the  
5 jury room to continue their deliberations.)

6 THE COURT: At least, Mr. Sorkin, you know  
7 Government's Exhibits 21 through 25.

8 MR. SORKIN: My recollection now is I showed  
9 them --

10 THE COURT: You don't have to tell me what your  
11 recollection is. The job had got to be done and this talk  
12 on the record isn't conducive to that end.

13 (Note marked Court Exhibit 5.)

14 THE COURT: Yes, can we conclude this or are  
15 you still debating in your mind?

16 MR. ALENSTEIN: We are ready, your Honor.

17 MR. DERFNER: We are ready, your Honor.

18 MR. SORKIN: We are not quite ready. We have  
19 some documents we can hand in in the interim. About another  
20 15 minutes, your Honor, and I will be through.

21 (Pause.)

22 MR. SORKIN: Your Honor, I have gone through my  
23 summation and I have been able to pull out the exhibits not  
24 only that were mentioned but were also passed to the jury,  
25 including 21 through 31.

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2 THE COURT: As you understood from the colloquy,  
3 they don't want any more than what were shown to them or  
4 passed to them, as I understand it.

5 MR.SORKIN: Then I misunderstood.

6 THE COURT: Mr. Sorkin, you supported the view  
7 and I acquiesced to it that we have them in. We asked  
8 for clarification. The clarification was they wanted  
9 only what was shown to them or held up to them.

10 MR. SORKIN: Then I misunderstood. I didn't  
11 take out every one, your Honor.

12 THE COURT: Do not defense counsel agree with  
13 what I just stated?

14 MR. DERFNER: Yes, your Honor.

15 MR. ALLENSTEIN: Yes, your Honor.

16 THE COURT: I would suggest that you stick  
17 only to what you showed them. It is true, as I recall it,  
18 you were the one who showed the most.

19 May I suggest to you, Messrs. Alenstein and  
20 Derfner, that you simply delineate to the reporter what you  
21 have from your exhibits that you want to submit.

22 MR. ALLENSTEIN: I have here from the defense  
23 exhibits, Frank's Exhibit M, Stoller Exhibit B, Stoller  
24 Exhibit C, Stoller Exhibit E, Stoller Exhibit G, Stoller  
25 Exhibit P-1, Stoller Exhibit O, Stoller Exhibit R, Stoller

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2 Exhibit S, Stoller Exhibit Z.

3 We also have Stoller Exhibit T, your Honor,  
4 as to which only two paragraphs are in evidence, and the  
5 government counsel is in agreement with me that as soon  
6 as we are finished with this particular colloquy, government  
7 counsel will have those two paragraphs Xeroxed for us and they  
8 can be sent in a few minutes late.

9 THE COURT: All right.

10 MR. ALENSTEIN: I have Stoller Exhibit AA and  
11 Stoller Exhibit AD.

12 In addition to those exhibits, your Honor,  
13 there were mentioned and I believe shown to the jury during the  
14 summation for defendant Stoller a number of government  
15 exhibits which I will have to ask the government to produce  
16 for us. They are Government's Exhibits 2-A through 2-E --

17 MR. SORKIN: We mentioned that, too.

18 MR. ALENSTEIN: Fine. Government's Exhibit 4,  
19 Government's Exhibit 11, 12, 33, 34, 35, 37, 39, 40 and  
20 105.

21 MR. DERFNER: Your Honor, I have assembled the  
22 exhibits that Mr. Feldshuh referred to in his summation, which  
23 are Frank Exhibit D, Frank Exhibit H, Frank Exhibit O,  
24 Frank Exhibit P, and Frank Exhibit Q.

25 In addition to those exhibits, your Honor,



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2 Mr. Feldshuh referred to Government's Exhibit 4, which has  
3 already been mentioned by Mr. Alenstein, Government's Exhibit  
4 21 through 25, which the jury specifically asked for when  
5 they returned to the room, to the court room, Frank Exhibit J,  
6 which is the day book and has already been given to the  
7 jury and Stoller Exhibit G, which I believe Mr. Alenstein  
8 also included.

9 MR. ALENSTEIN: That is correct.

10 THE COURT: I assume you have Frank's Exhibits D,  
11 O, P and Q ready to go?

12 MR. DERFNER: Yes. We have them all ready  
13 to go, your Honor.

14 THE COURT: Now, Mr. Sorkin.

15 MR. DERFNER: You didn't mention Frank  
16 Exhibit H, your Honor, in your summary.

17 THE COURT: Frank Exhibit H, you are right. If I  
18 overlooked it, I should not have.

19 MR. DERFNER: Yes, your Honor.

20 MR. SORKIN: Your Honor, we are turning over  
21 Government's Exhibits 2-A through P, the Pentonville agree-  
22 ment --

23 THE COURT: Wait a minute. You don't have to  
24 describe them.

25 MR. SORKIN: I am sorry.



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2 THE COURT: Let us go back. You said Government  
3 Exhibits what?

4 MR.SORKIN: 2-A through 2-P, Stoller  
5 Exhibit A, Government's Exhibit 5 through 9, Government's  
6 Exhibits 11, 12 and 13 and 14, Government's Exhibits 20  
7 through 35, your Honor, 58-A, 65-A through 65-H inclusive,  
8 66-A through 66-C inclusive, Government's Exhibit 40, which the  
9 defense asked for, Government's Exhibits 37 and 39, which were  
10 asked for by the defense, Government's Exhibits 102-A and  
11 102-B and Government's Exhibit 105.

12 THE COURT: That's been asked for, too.

13 MR. SORKIN: Right, your Honor.

14 THE COURT: Is that it?

15 MR. SORKIN: Yes, your Honor, with the exception  
16 of Stoller Exhibit T which we are going to Xerox about ten  
17 lines of.

18 THE COURT: Mr. Alenstein has explained that.  
19 I assume that is agreeable?

20 MR. SORKIN: Yes, your Honor.

21 THE COURT: Save for the photostating redaction,  
22 let us put everything together and we will have the marshal  
23 turn it over.

24 MR. SORKIN: Yes, your Honor. Two other things.  
25 Your Honor, I am sorry. Government's Exhibits 107, and 106,

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2 the two charts which we made reference to.

3 THE COURT: We can't deny that you showed  
4 them to the jury.

5 We will have these turned over to the  
6 marshals.

7 As soon as you get the redaction of Stoller  
8 Exhibit T, you deliver that to the marshal, too, however  
9 long it takes.

10 MR. SORKIN: Yes, your Honor.

11 THE COURT: All right, gentlemen.  
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2 (In open court; jury not present.)

3 THE COURT: Mr. Stoller and Mr. Alenstein,  
4 I observed before I came in, as Mr. Alenstein knows, that  
5 Mr. Gould is not here. I questioned Mr. Alenstein about it.  
6 Mr. Stoller, Mr. Alenstein informs me that apparently  
7 it was agreed by you that Mr. Gould did not have to be  
8 here for taking the verdict.

9 MR. STOLLER: Yes, sir.

10 THE COURT: Is that your understanding of the  
11 matter?

12 MR. STOLLER: Yes, your Honor.

13 THE COURT: All right. Thank you.

14 Very good. We will have the jury come in.

15 (At 5:00 o'clock p.m. the jury returned to  
16 the courtroom.)

17 THE CLERK: May I proceed, your Honor?

18 THE COURT: Yes. Why don't I hand this back  
19 to you if you would like it, Mrs. DeBartola, to use this as  
20 a guide. You can give it back to me later if you like  
21 (handing).

22 THE CLERK: May I proceed, your Honor?

23 THE COURT: Yes.

24 (Jury roll called; all present.)  
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BY THE CLERK:

Q Madam Forelady, has the jury agreed upon a verdict as to the defendant Philip Stoller and defendant Martin Frank?

A We have.

Q What is your verdict as to defendant Stoller as to Count 1?

A Are you going to give me all counts?

Q Yes, ma'am.

A Guilty.

Q Count 2?

A Guilty.

Q 3?

A Guilty.

Q 4?

A Guilty.

Q 5?

A Guilty.

Q 6?

A Guilty.

Q 7?

A Guilty.

Q 8?

A Guilty.

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Q 9?

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A Guilty.

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Q 10?

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A Guilty.

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Q 14?

7

A Guilty.

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Q And 16?

9

A Guilty.

10

THE CLERK: You say you find the defendant

11

Stoller guilty in each of Counts 1 through 10, 14 and

12

16, and so say you all.

13

BY THE CLERK:

14

Q Madam Forelady, what is your verdict as to

15

defendant Frank on Count 1?

16

A Guilty.

17

Q Count 2?

18

A Not guilty.

19

Q Count 3?

20

A Not guilty.

21

Q Count 4?

22

A Not guilty?

23

Q Count 5?

24

A Not guilty.

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Q Count 6?

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2 A Not guilty.

3 Q Count 7?

4 A Not guilty.

5 Q Count 8?

6 A Not guilty.

7 Q 9?

8 A Not guilty.

9 Q 10?

10 A Not guilty.

11 THE CLERK: You say you find the defendant Frank  
12 guilty on Count 1 and not guilty on each of Counts 2  
13 through 10, and so say you all.

14 THE COURT: Before I dismiss the jury, gentlemen,  
15 would you like the jury polled?

16 MR. ALLENSTEIN: Please, your Honor.

17 MR. DERFNER: Yes, your Honor.

18 THE CLERK: Members of the jury, listen to your  
19 verdict as to each defendant as to each count as it now  
20 stands recorded.

21 You say you find the defendant Stoller guilty  
22 on each of Counts 1 through 10, 14 and 16. You further  
23 say that you find the defendant Frank guilty on Count 1,  
24 not guilty on each of Counts 2 through 10.

25 (Each juror upon being asked by the clerk,

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2 "Is that your verdict?", answered in the affirmative.)

3 (Jury discharged.)

4 THE COURT: I will put this matter down for  
5 sentence in respect to each defendant on Friday, December 6,  
6 1974, 2:15 o'clock in Room 11:05 of this courthouse.

7 A presentence report will be ordered in respect to the  
8 defendants Stoller and Frank.

9 If you gentlemen would like, I will put down  
10 any post verdict motions until the day of sentence.

11 MR. ALLENSTEIN: We would appreciate that, your  
12 Honor.

13 MR. DERFNER: Yes, your Honor.

14 THE COURT: I would request, however, most  
15 earnestly and emphatically that you notify Mr. Sorkin in  
16 advance as to the nature and thrust of your motions so  
17 that he will be prepared to answer if called upon to do so.  
18 They do not have to be in writing if you choose, they can  
19 be oral. I do think you ought to notify your opposing  
20 counsel and our co-counsel as to what you intend to do in  
21 respect to those motions.

22 Now, there comes the matter of bail. Any  
23 applications on bail?

24 MR. ALLENSTEIN: If your Honor please, I would  
25 respectfully move that the bail which has been presently



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2 posted by defendant Stoller be continued.

3 THE COURT: Refresh me.

4 MR. ALENSTEIN: That is a \$100,000 personal  
5 recognize bond, your Honor, secured by a \$10,000 surety  
6 bond.

7 THE COURT: Any objection, Mr. Sorkin?

8 MR. SORKIN: No, your Honor.

9 THE COURT: I want to ascertain, where is the  
10 passport of Mr. Stoller at this point?

11 MR. SORKIN: It is in the government's possession,  
12 your Honor.

13 THE COURT: All right. Very good.

14 Application granted, Mr. Alenstein, for Mr.  
15 Stoller.

16 MR. DERFNER: On behalf of the defendant Frank  
17 I would likewise ask that the bail that has been posted be  
18 continued. His bail is a \$100,000 personal recognize bond  
19 secured by \$5,000 cash. His passport is in the custody of  
20 Mr. Sorkin.

21 THE COURT: Is that correct, sir?

22 MR. SORKIN: That is correct. We have no  
23 objection, your Honor.

24 THE COURT: All right. That bail will be  
25 continued.

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Well, gentlemen, it has been an interesting five

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weeks. I shall see you anon.

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Good night.

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